



CITY OF  
**PORTLAND, OREGON**

OFFICIAL  
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **28TH DAY OF SEPTEMBER, 2005** AT 9:30 A.M.

THOSE PRESENT WERE: Commissioner Adams, Presiding; Commissioners Adams, Leonard and Saltzman, 3.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Harry Auerbach, Chief, Deputy City Attorney; and Larry Sparks, Sergeant at Arms.

	<b>Disposition:</b>
<p><b>DUE TO THE ABSENCE OF TWO COUNCIL MEMBERS            NO EMERGENCY ORDINANCES WERE CONSIDERED THIS WEEK</b></p> <p><b>ALSO ITEMS WERE NOT HEARD UNDER A CONSENT AGENDA</b></p> <p><b>COMMUNICATIONS</b></p>	
<p><b>1130</b> Request of Richard L. Koenig to address Council regarding update on Attorney General investigation of the Department of Motor Vehicles (Communication)</p>	<b>PLACED ON FILE</b>
<p><b>1131</b> Request of Peter Rideout to address Council regarding authorization for the towing of vehicles not required to be registered (Communication)</p>	<b>PLACED ON FILE</b>
<b>TIME CERTAINS</b>	
<p><b>1132 TIME CERTAIN: 9:30 AM</b> – Establish goals and standards for city funded after-school programs (Resolution introduced by Commissioner Saltzman)  (Y-3)</p>	<b>36338</b>
<b>REGULAR AGENDA</b>	
<p><b>1133</b> Accept bid of Thyssenkrupp Elevator Company for Justice Center Elevator Modernization for \$1,366,089 (Purchasing Report - Bid No. 104176)  (Y-3)</p>	<b>ACCEPTED            PREPARE            CONTRACT</b>

**1134** Establish a collaborative public and private work group to develop solutions to the problem of garbage dumpsters and refuse containers permanently stored on public sidewalks and in the public right-of-way (Resolution introduced by Commissioners Adams and Saltzman)  
(Y-3)

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**36339**

<b>Mayor Tom Potter</b>		
<b>Office of Management and Finance – Human Resources</b>		
<b>1135</b>	Authorize a labor agreement with Portland Fire Fighters Association for terms and conditions of employment of represented employees in the bargaining unit (Ordinance)	<b>PASSED TO SECOND READING OCTOBER 5, 2005 AT 9:30 AM</b>
<b>Commissioner Sam Adams</b>		
<b>Bureau of Environmental Services</b>		
<b>1136</b>	Authorize two Intergovernmental Agreements with Oregon Health Sciences University for the City to assist in restoring native vegetation on OHSU Open Spaces Properties through the Watershed Revegetation Program (Ordinance)	<b>PASSED TO SECOND READING OCTOBER 5, 2005 AT 9:30 AM</b>
<b>1137</b>	Authorize Intergovernmental Agreement with the Port of Portland for maintenance of Port-owned sewage pump stations (Ordinance)	<b>PASSED TO SECOND READING OCTOBER 5, 2005 AT 9:30 AM</b>
<b>1138</b>	Authorize use of Eminent Domain Authority of the City to acquire certain interests in private property necessary for completion of the Burlingame Sanitary Trunk Sewer Rehabilitation Project No. 7911 (Second Reading Agenda 1115)  (Y-3)	<b>179611 AS AMENDED</b>
<b>Office of Transportation</b>		
<b>1139</b>	Accept report on a prioritization and evaluation process to examine the Office of Transportation functions and budget (Report)  (Y-3)	<b>ACCEPTED</b>
<b>1140</b>	Authorize contract and provide for payment for the SE Hawthorne Boulevard Transportation Improvement project between SE 20th Avenue and SE 55th Avenue (Second Reading Agenda 1113)  (Y-3)	<b>179612</b>
<b>1141</b>	Authorize contract with CMTS, Inc. to supply street construction inspection and engineering technician personnel as needed and provide for payment (Second Reading Agenda 1114)  (Y-3)	<b>179613</b>
<b>1142</b>	Amend Intergovernmental Agreement with the Oregon Department of Transportation for the Infrastructure Safety Improvement Program to transfer funds from SW Alice St. to SW 30th Ave. (Second Reading Agenda 1116; amend Contract No. 52014)  (Y-3)	<b>179614</b>

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<p><b>1143</b> Assess benefited property for speed bump improvements in the NW Westover Road Speed Bump Local Improvement District (Second Reading Agenda 1124; C-9983)  (Y-3)</p>	<p><b>179615</b></p>
<p style="text-align: center;"><b>Commissioner Randy Leonard</b></p> <p style="text-align: center;"><b>Water Bureau</b></p> <p><b>1144</b> Authorize a contract and provide payment for demolition of Westinghouse Building and Fleet Garage canopy (Ordinance)</p>	<p style="text-align: center;"><b>PASSED TO SECOND READING OCTOBER 5, 2005 AT 9:30 AM</b></p>
<p><b>1145</b> Remove the Bureau of Water Works Interstate Fitness Facility from those organizations eligible to use payroll deduction system and allow employees to utilize the Interstate Fitness Facility free of charge (Ordinance; amend Code Section 5.08.140)</p>	<p style="text-align: center;"><b>PASSED TO SECOND READING OCTOBER 5, 2005 AT 9:30 AM</b></p>

At 10:42 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,  
OREGON WAS HELD THIS **28TH DAY OF SEPTEMBER, 2005** AT 2:00 P.M.

THOSE PRESENT WERE: Commissioner Adams, Presiding; Commissioners Leonard  
and Saltzman, 3.

At 3:30 p.m., Council recessed.

At 3:37 p.m., Council reconvened.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Kathryn  
Beaumont, Senior Deputy City Attorney; and Larry Sparks, Sergeant at Arms.

<p><b>1146</b> Appeal of Maplewood Neighborhood Association against Hearings Officer's decision to approve the application of Robert Whitaker to create a six lot subdivision with a new private street and stormwater management tract at 6726 SW 63rd Avenue (Hearing; LU 04-094246 LDS AD)</p>	<p><b>Disposition:</b> <b>CONTINUED TO</b> <b>OCTOBER 5, 2005</b> <b>AT 2:00 PM</b> <b>TIME CERTAIN</b></p>
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At 4:47 p.m., Council adjourned.

GARY BLACKMER  
Auditor of the City of Portland

By Karla Moore-Love  
Clerk of the Council

For a discussion of agenda items, please consult the following Closed Caption File.

**September 28, 2005**  
**Closed Caption File of Portland City Council Meeting**

This file was produced through the closed captioning process for the televised City Council broadcast.

Key: \*\*\*\*\* means unidentified speaker.

**SEPTEMBER 28, 2005      9:30 AM**

**Adams:** It is wednesday, september 28, regular session of the Portland city council. The mayor is away on business to guadalajara, mexico, and commission Sten is on vacation, so it is just the three of us. And as the rotating council president this is my first meeting, first meeting conducting the meeting. So be gentle. But Karla, if you'd call the roll. [roll call] all right. We have communications item number 1130.

**Item 1130.**

**\*\*\*\*\*:** Portland.

**Adams:** Good morning, mr. Koenig. How are you? Please say your name --

**Richard Koenig:** Sorry to see the mayor's not here today. Richard koenig.

**Adams:** You got it.

**Koenig:** I did talk with the attorney general's office yesterday. Her name is sherry clark. And she reported that these four salient facts her folks have been investigating the implementation of the optional titling rule, which provides for the authority of the d.m.v. To title a vehicle and turn it into a regulated motor vehicle only if the owner requests. And there's some handouts here that will give you -- the front page is the actual d.m.v. handout on the matter. And on the back are some questions that you might want to ask them. I formatted some questions. Of course, you might find other questions. But in regard to their investigation, she said the attorneys, including sara castner, have reviewed the optioning title rule, they have approved the optional titling rule, the optional titling rule has been circulated to all the branches of the d.m.v. In the state, and "it is being properly implemented." so with that what i'd like to do is make you and potentially the agents of the city, the Portland police bureau, aware of what they have been adamantly avoiding becoming aware of for some years now. If you look down about the middle of that page, almost exactly the middle of the page, the authority for the rule is stated, under optional titling, semicolon, rules. It says the department of transportation by rule may provide for the optional titling of vehicles that are not subject to the vehicle titling requirements, under this other section, or that are exempt. So there's two categories of vehicles in Oregon that are not supposed to be titled. Ok? Most of us don't know that. Most of us think every vehicle must. Ok? And this is the problem that was addressed with this legislation. The rules adopted for purposes of this subsection may provide for the titling of categories of, types of and otherwise, upon request of an owner, the department may issue a title if a vehicle that meets the requirements of the rules under this section. And then it goes on to say -- and this is perhaps, for the people that never knew that the d.m.v. Didn't have the authority -- prior to the adoption of this rule obviously they couldn't have been registering all of these vehicles, right, including everybody's personal use vehicle. So probably the most important part of this document is in the next section --

**Adams:** And you're out of time, mr. Koenig. You'll have to continue this next time.

**Koenig:** Folks, you can get a copy of this from sam Adams. He's the pdot commissioner, right?

**Adams:** Transportation commissioner. Thank you very much. We now have council item number 1131.

**Item 1131.**

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**Adams:** Mr. Rideout, are you here? All right, then let's move on to the time certain. Item number 1132. Commissioner Saltzman.

**Item 1132.**

**Saltzman:** As you may know, the city is a significant funder of after-school programs in Portland through our children's investment fund, and also through our parks and recreation programs. Between these two programs, the city invests more than \$3 million a year in after-school programs. But we need to ensure that this money is well spent, and that certainly has been a key priority of the children's investment fund, is making sure we're getting results with those dollars. We also need standards and guidelines to ensure that the programs we fund are using the best practices available. And we also need to ensure that we're working collaboratively with our community partners, who are also investing in after-school programs. One of our partners is stand for children. A little more than a year ago, stand for children began convening a group of community stakeholders with just these goals in mind. And today they're asking the Portland city council to join the Multnomah county board of commissioners and the allocation fund -- or allocation committee of the children's investment fund to adopt the protocols that emerged from this merge. Shannon champion of from stand for children will tell us more about these guidelines.

**Adams:** Welcome. Glad you're here.

**\*\*\*\*\*:** Thank you.

**Adams:** If you could please give us your full name. You have three minutes each.

**Shannon Champion:** I'm Shannon Champion. I'm actually just going to talk about stand for children, and then Colleen Davis, one of our volunteer leaders, at the head of this work, will talk about the recommendations. As many of you know, stand for children is a nonprofit children's advocacy organization. We have 2600 members and growing in the city of Portland. And we work on making children and public schools a truly top political priority. We were thrilled to work with -- [interruption in broadcast]

**Davis:** We appreciate how all of you demonstrate your interest in the livability of this vibrant city. Prioritizing the children is such an important factor in all of our lives. As you know, we presented our list of improvements for after-school programming across the county to the county commissioners in August. They enthusiastically and unanimously adopted them as well did the children's investment fund allocation committee in May of this year. We also appreciate the time that each one of you has shared with us in helping us craft this document. We've spent over a year researching best practices nationwide, visiting 30 after-school programs in the county, most of them sun programs, schools uniting neighborhoods, and convening a task force of leaders and stakeholders from throughout the county. During this process, we also gathered input from the considerable and growing membership of the Portland chapter of stand for children. Helping to close the achievement gap, empowering reluctant family members and providing another opportunity in developing better citizens must take focus and effort from many different directions. It takes a village couldn't be truer when it comes to gathering resources for the after-school programming. We've come to the conclusion that after-school time programs based on student outcomes, focused on both academic and nonacademic classes, as well as intentional relationship-building between a skilled caring adult and each student during the year is core to effective after-school time and leads to direct enhancement of that child's school day. We know that programs that are fun, safe, and include empowerment of family have an important role in building community. Bottom line, the better experience a student has in school leads to a better attitude toward learning and life. That student then learns how to make good choices, pursue goals, dreams, and success. A critical component to quality program must include rigorous compliance and accountability to promote improved and more effective service to our children to understand the taxpayers of this city and county. We've included that evaluation will occur at the minimum yearly. This must take place in programming components as well as contracts, with supportive agencies. The county and the

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city of Portland have a history of investing in preventative programs. After-school time is one area of prevention that you and the county support, and we applaud this investment and focus on funding programs that will help students be successful in their pursuit of education as well as their well-being. Stand for children's recommendations move us further down the road to improving outcomes for all students engaged in our current after-school time programs. We appreciate that the sun school sites are run with the flexibility of being relevant to their community, and we strongly believe that this flexibility can be maintained while each site implements the same high standards we're asking for here today. The result of the city, county and children's investment fund adopting these recommendations will be greater alignment between the city and county on core outcome for students and greater academic rigor and enhanced accountability for after-school programs. We appreciate the adoption of these recommendations and the immediate implementation for all sun school sites. Thank you all for your work and the support of our children in our city.

**Adams:** Thank you.

**Davis:** I'd like to just introduce one more person.

**Adams:** Sure.

**Davis:** As well as my colleagues from stand for children, but mary richardson is here from the city parks department who works directly with the after-school programming. She's a trainer and important person in that area.

**Adams:** Thanks, mary.

**Saltzman:** Did you want to just read the title line from each of your five recommendations?

**Davis:** Sure.

**Saltzman:** I think that would be helpful.

**Davis:** Recommendation one, prioritize the following core outcomes. And that's the developmental assets, external and internal assets. We want to increase school attendance for at-risk kids and of course student behavior in school. Recommendation two, effectively engage high-risk students. We think after-school programming should be available to every student, but especially at-risk students, to improve the achievement gap and enhance their learning ability. Number three, align after-school programs with classroom learning. The relationship the site has in the building with the staff really is important to enhancing that school day. Number four, commit to professional development and training for staff. We asked for money from the county, and that didn't go through this year, but the trainers of staff development are looking internally at the skills that they have this year, and hopefully next year we can get that funded better. And number five is what we talked about, clear lines of accountability.

**Saltzman:** Ok. Thank you.

**Adams:** Thank you very much. Any other questions for our panelists? If not --

**\*\*\*\*\*:** No.

**Adams:** If not, any other invited testimony?

**Saltzman:** No other invited testimony?

**Adams:** Anybody signed up to testify?

**Moore:** No one signed up.

**Adams:** Is there anyone in the room that would like to testify on this agenda item that did not sign up? Thank you very much. Any other council discussion on item 1132? If not, then Karla, would you call the roll.

**Adams:** I'd like to commend the stand for children for their advocacy for children and families and strong communities. I would like to add -- I enthusiastically support these recommendations. I think that the program has been up and running long enough that this kind of rigor, when it comes to outcomes and quality control among all the sites for the sun schools, is absolutely an important sort of evolution of our efforts at providing sun school activities. I also want to, since you're here, thank you for all the great work you did in salem, having attended a number of the rallies that you



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organized. They were passionate. I think you made a difference none of us are necessarily satisfied with the ultimate outcome, but thanks to your efforts and the folks that were with you we were able to make some progress. Thank you for all your work. And I want to thank commissioner Saltzman for his work on this as well. I vote aye.

**Leonard:** Having spent 10 years in the legislature fighting for school funding, it is distressing to me, particularly having grown up in Portland, to see the state of our schools. And that we have leaders in this state, in the legislature, who continue to attack public schools as disheartening for life-long Oregonians. You guys are a bright spot in a dismal picture, and you're doing exactly what you need to do to fight for our kids. And if it wasn't for people like you, it would be even worse scenario in this state than what it is today. So thank you for what you do. I'm pleased to support you. Aye.

**Saltzman:** I want to thank stand for children for their leadership in pulling together people at the county, people at the children's investment fund, parks and recreation department, and all the other many people who are interested in in making sure that not only our school day programs are strong, but as important as the after-school program activities are strong, have direction, and are leading toward supporting academics and also providing much-needed time for kids to do other things as well as academics. I think that it's a real -- really incumbent upon those of us in deposit today when we're seeking voter support for children's investment fund, for a parks levy that funds after-school programs, for the many programs the county offers, that we're able to clearly articulate the results we expect from those programs, and we're investing those dollars in a way that will clearly attain those results, and that we can present that information with clarity to our voters and to our taxpayers. And I think we're doing that. This effort, I think, will help us be even better in effectively communicating with our public about how their dollars are getting results, how they're keeping kids in school, and keeping kids safe, keeping them in school, and increasing the graduation rate, which is sadly on the decline in our area, and in fact nationwide. The high school graduation rate is -- is very soft right now. So I want to thank you for your work, and just applaud stand for children as an organization, too. You've been very helpful to me and the children's investment fund to school funding issues, and we hope you only get bigger and better and more membership as you go. And thanks to shannon champion for her leadership as well. Aye. [gavel pounded]

**Adams:** Thank you very much. All right. We're at item number 1133. Good morning, jeff.

**Item 1133.**

**Jeff Baer, Bureau of Purchases:** Good morning, commissioners. I'm jeff baer, the acting director for the bureau of purchases. And before you you have a purchasing agent report requesting approval to execute a contract with thyssenkrupp elevator company in the amount of \$1,366,089. I wanted to point out that you'll notice on here that there's 0% minority women/emerging small business participation in this particular contract. One of the things we had done, we did identify five different divisions of work, but because of the unique nature of this elevator upgrade project, they are self-performing all of the work themselves internally to their own organization. This was -- we did receive three bids on this, and that was true on the other two bids that we received as well. So with that, if you have any questions, I'll stop there, and bob is here from bureau of general services to address technical questions.

**Adams:** Bob, anything to add?

**Bob Kieta, Bureau of General Services:** Nothing to add, other than this will get our elevators in compliance with state code.

**Adams:** Any questions from council? Thank you very much. Karla, please call the roll.

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye. [gavel pounded]

**Adams:** All right. Council item 1134. Commissioner Saltzman.

**Item 1134.**

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**Saltzman:** Thank you, mr. President. Through collaboration with bureaus under my jurisdiction, sustainable development, and bureaus under your direction, the office of transportation, and then our ombudsman, michael mills, we intend to embark on a process here to tackle the problem of dumpsters in the public right-of-way. And this is an issue that as a city develops and as more people live in denser circumstances and businesses thrive on the lower floors, particularly restaurant establishments, there's more and more conflicts over these issues, and we need to figure out a way that businesses can also -- can do their business successfully, but that we can also figure out, hopefully, how to get the dumpsters out of the public right-of-way, because they do become a nuisances in several respects, whether it's odor or visual, aesthetics of a situation. So in the good old spirit of Portland processes, we're embarking upon one of those processes to include all the relevant stakeholders in the city, including the ombudsman's office, our offices, and as well as citizens, to come up with some solutions that they can then report back to council. With that, i'll simply turn it over to michael mills or judy.

**Michael Mills, City Ombudsman:** Thank you very much. I'm michael mills, ombudsman for the city of Portland. Commissioner Saltzman sort of summed up what I was going to say, but I would just say i've been impressed trying to deal with this issue for the last three years that we're finally at a point where we can break down the city's silos, get the city bureaus together. We've got cooperation from a host of business and neighborhood organizations that are willing to tackle this tough problem, which they haven't been willing to do in the past. And I think with judy's help and a representative from the bureau of transportation, we'll come up with collaborative solutions that provide options for addressing this problem for the long-term. As you saw from the report that we submitted in may, the problem is not a new problem. There's a municipal court record in 1905 dealing with this problem. And bud clark and the city club had addressed it some 15 years ago. And now we're finally saying we're going to embark on what will be a tough work group to -- to address these solutions. So I want to thank council for supporting this and giving the direction to move forward on it. And i'd be happy to answer questions. And judy might want to add a few comments.

**Judy Crockett, Office of Sustainable Development:** Thank you, commissioner Saltzman, commissioner Leonard, commissioner Adams. I'm judy crockett. We have jurisdiction over garbage and recycling collection if the city. I've been working on this issue for just under a year, and i've been impressed at how many different city bureaus have a piece of this problem and the willingness of city groups to come together and see if we can come up with a solution. I really look forward to being part of what I consider a -- a unique effort to deal with a particularly urban problem. Thank you.

**Adams:** Any questions from council? Thank you very much. Did anyone sign up to testify?

**Moore:** No one signed up.

**Adams:** Is there anyone in the room would like to testify on this agenda item that did not sign up? All right. Then let's proceed with the vote. I'd like to thank michael mills, the ombudsman for the city, and judy crockett from the office of sustainable development. As commissioner Saltzman mentioned this sets in process a task force who will report back to us in one year what potential solutions are to the issue of dumpsters on the sidewalks and in the right-of-way. It will be a difficult issue. Many of these buildings that have dumpsters on the sidewalk were built without contemplating even the notion of garbage dumpsters. But I do think, for instance, in sort of looking at sort of joint garbage collection sites on blocks and other innovations where businesses might be able to pool their garbage facilities, that we can make headway on this. And as commissioner of transportation, i'm committed to doing everything that we can do from our bureau to provide as innovative and cost effective solutions as possible. I want to underscore my thanks for setting up a task force that includes all the stakeholders. There should be very lively discussions in this task force. In fact, if there are not lively discussions in the task force, then something's very wrong with

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what we set up. And I hope that they will come forward with both majority recommendations and minority recommendations in terms of how we should move forward. I also know that this isn't just a -- sort of an issue of aesthetics in the city. It's a safety issue in terms of trip hazards. I know from the fire bureau briefings that it's also a major source of fires in the city of Portland, dumpster fires. So thank you very much for all your work on this. The original vision of the ombudsman office was to deal with these exact issues. It's really good to see you exceeding and meeting that vision. So aye.

**Leonard:** Aye. **Saltzman:** Aye. [gavel pounded]

**Adams:** Resolution passes. Item number 1135. And this is the first reading of a nonemergency ordinance.

**Item 1135.**

**\*\*\*\*\*:** Good morning.

**Adams:** Good morning.

**Ed Rutledge, Bureau of Human Resources:** Commissioner Adams, commissioner Leonard, commissioner Saltzman. This is indeed a first reading of an ordinance that would ratify the tentative agreement with Portland firefighters association. Calls for a two-year agreement.

**Adams:** And your name for the record, sir.

**Ed Rutledge:** Ed Rutledge, labor and employees relationships manager for the city of Portland. Two-year agreement with wages, which for 2005-2006, because this agreement does start on July 1 of 2005, 2.7%, the same as -- as provided to other employees. And obviously we don't know the c.p.i. Yet for 2006-2007. For benefits, it calls for the current plan for the 2005-2006 year and for a 95/5 split of costs in 2006-2007. Because it's a two-year agreement, it leaves open what to do with the out years. We'll have to address that again in the next set of negotiations with the pffa. It adds two kelly days to the schedule for these firefighters, which reflected the comparables we were looking at with other comparable jurisdictions. And it also provides for what we call a premium equalization, getting the premiums all to a 6% for those who are eligible for the premiums. I need to note, also, that we have recently learned, in fact yesterday, that on the five-year forecast for costing, we need to get a little bit more information. We do know that it will not be more than what we estimated, but it could be less, and that's -- there's some conversation that will need to go on between the bureau and o.m.f. On that. I need to also -- also would like to report that the pffa, and Jack Fenders, the president of the pffa, has ratified this agreement. Also just like to point out that this tentative agreement is a result of a unique bargaining process that included both a collaborative style as well as a traditional style, but at all times the parties were very transparent in their communication, very polite in the negotiations, even though they were extended. As I said, pffa has ratified. It is a rather short-term agreement. We'll be back at the table almost a year from now to deal with some of the tough issues that are facing the city in the future. And some employee costs deals with benefits. We nevertheless recommend ratification of this when this comes up for action by council.

**Adams:** Thank you. Mr. Fenders.

**Fenders:** Good morning. I'm Jack Fenders, president of the Portland firefighters association. I'm just here to say that as Ed has mentioned, this was a very long process, we used both the new style of negotiations and the traditional. We accomplished quite a bit at the bureau level in doing this, and we feel that overall this is a fair package. We think that we address many of the problems both at the bureau level and city level that were mutually agreeable. We know that the medical situation is something that everybody's going to have to work on in the next two years, and we anticipate that labor will have some type of plan we'll be able to present to help address this problem in the future.

**Adams:** Thank you. Any questions from council?

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**Saltzman:** Ed, you mentioned the current -- for the 2005-2006 year, with respect to the healthcare plan, it's the current plan?

**Ruttledge:** Correct.

**Saltzman:** What does that mean in terms of the sharing of the premium between employee/employer?

**Ruttledge:** The current plan -- you may recall that there's a self-insured plan, and there's also the kaiser plan.

**Saltzman:** Let's talk about the self-insured.

**Ruttledge:** Right. In the self-insured plan there's what's known as a premium share. And there's also a cap in process, and the difference between the cap and the actual cost is being picked up by reserves that were built up in the health fund in past years. Those reserves have, as we're all aware, those reserves have been drawn down to a point of near extinction. By the end of the 2005-2006 fiscal year, those reserves will be, for the most part, gone. There will be some residual amounts left for 2006-2007, but we do not have enough left in the reserves to carry through on 2006-2007. So what employees are paying is just the -- the actual out-of-pocket costs for employees is a premium share that is based in there. They do not see the difference between the actual cap and the actual cost, because, as I said, that's being picked up by the reserves, or built up in previous years. Does that help?

**Saltzman:** Well, I guess i'm looking for a percentage. What is the employee's share of premium cost in this first year? I mean, we're going -- next year, it will be 95. 5% -- what is it this year?

**Ruttledge:** Well, it depends on whether you're going to be looking at the difference between the cap and the actual cost.

**\*\*\*\*\*:** Yeah. This year all employees --

**Adams:** Give us your name for the report.

**Yvonne Deckard, Director, Bureau of Human Resources:** Yvonne deckard, h.r. Director. This year the premium share for family coverage for our employees is about \$36, which represents about 2% of the overall healthcare costs.

**Saltzman:** 2%. Ok, thanks.

**Adams:** Any additional questions?

**Saltzman:** Well, I raised this question when we were dealing with the last contract, dealing with parks and rec. Council adopted five principles in december of 2004 regarding future healthcare funding issues. And as with the previous agreement, this one doesn't step up to step number five, which says that there should be a 95/5 plan, but any cost above the premium would be shared 50/50 between employer and employee. So am I correct, we don't get to that fifth step, fifth and final step?

**Ruttledge:** In this contract, we don't get to that particular question.

**Saltzman:** Ok.

**Deckard:** Yeah. The -- what council adopted through the resolution back in december called for the first year being the status quo, which was to finish out the reserves, to increase the premium share slightly, and to engage in an education program with our employees about our healthcare costs, and then the second year was based off of -- was to move to a 95/5, and then if the third year we would go to a 50/50 split premium share. This is I two-year deal, so it falls short of us going into that third year, the same as the recreation agreement. So we will be back at the table with recreation, as well as pffa at that time, to try to come up with a solution, a collaborative solution, as far as how we will actually address the out years.

**Adams:** So it is or is not consistent with the december direction from council?

**Deckard:** It's consistent with the first two years of council directive.

**Adams:** The contract doesn't go to the third year.

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**Deckard:** Because the contract doesn't go to the third year, you don't get to the third year solution. We also know at this time that when we look at our comparisons, arbitration units, such as fire and police, we also look at our comparables, and throughout the state basically our comparables are at a 95/5. But we do have to work on the solution in the out year, but this agreement falls short of that.

**Saltzman:** The 95%/5% they're that we will move to in 2006-2007 --

**Deckard:** Was part of what council adopted in december.

**Saltzman:** -- has no cap. In other words, we pay 95% of the costs, they pay 5% of the costs. There's no cap on those costs?

**Deckard:** Right. What council adopted in --

**Saltzman:** There's no reserves left either.

**Deckard:** Right. What council adopted in december was that we would finish -- complete the reserves the first year. We would take a new base of 95/5 in the second year, and then -- and we would also implement a wellness portion of the plan and move forward. But yes, there was no cap at that point.

**Leonard:** Which is consistent, again, as sam pointed out with our policy.

**Deckard:** Yes. It's consistent with the first two years of the policy.

**Adams:** You're using the phrase "falls short." I know what you're trying to say, the timeline this is consistent with city policy, it doesn't go to a third year, so it is not yet consistent or inconsistent with the third year because we're not in a third year.

**Deckard:** It will not reach the third year.

**Adams:** Correct.

**Saltzman:** It seems like labor agreements often go well beyond their expiration in negotiating a successor agreement. And that we usually -- in other words, in july 1 of 2007, it's likely, is it not, from past experience, we won't actually have an executed agreement, but we'll be relying on our current agreement while we're still in negotiations or arbitration for a successor agreement. Is that statistically the case usually?

**Deckard:** Statistically that's the case. That's a strong possibility. We've been working, you know, very diligently, both the city and the unions, to try to shorten that time frame. As you know, and as commissioner Leonard has stated previously, with the last agreement we actually did complete that negotiations, you know, before the end of that agreement. We actually attempted to do so this time with the fire agreement, and, remember, we had reached a tentative agreement before the -- the -- the agreement expired, but because that t.a. Was felt -- pffa felt to ratify, it put us back at the table.

**Adams:** Is there a retroactive option to our negotiations if they go beyond the agreements?

**Deckard:** Generally the agreement that's in place, once it expires, is the agreement -- the conditions that stay in place until you reach a new agreement. I think what commissioner Saltzman is asking is, is if we fail to reach a successor agreement after the -- this agreement expires, will we be at 95/5, and the response to that, of course, yes, that's where we would be. But, you know, within negotiations, you know, what you do and how you handle that is -- is part -- becomes part of negotiations.

**Saltzman:** So given that, you know, healthcare cost containment is the biggest issue, the largest growth factor in our cost category in government, and indeed private sector as well, and given that we're not falling short, but we're only going through with four steps out of the five that we agreed to in december, and the fifth step really is the toughest step, that is establishing a premium-sharing policy, but also some sort of division of who pays what we spend above the premium, and that is going to be the toughest, and that's in fact why we're only negotiating up to the precipice here, because nobody wants to be the first to try to figure this out, wouldn't it be very hard for us, the city, to budge bargaining units that have all signed into a 95% premium -- or a 5% premium share, no

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cap, still getting colas. What incentive are they going to have to return to the table and really deal with this tough issue? Wouldn't it be better to just keep on the existing agreement, even though it's expired, but just more or less keep the current agreements intact?

**Deckard:** Well, I mean, commissioner, there's a lot of things in the labor agreement, besides healthcare costs. And so, you know, our unions will want to reach agreement on healthcare, but on some of the other issues that are there. You know, we know that this is a difficult hurdle for us as an employer, as it is for every other employer that's out there. I mean, certainly it's the one that we're struggling with. I think all employers are struggling with it. Our goal here is to -- is to reach agreement, ratify this agreement, and to be able to work collaboratively with our unions as a group to try to craft a solution that works both for the city as well as for our employees. The formula that we put forth in december, we knew it was an aggressive formula. We know some things now that we didn't know then. We know that there's some problems with that formula, both for the unions, as well as for the city, as far as cost is concerned, because we do have to comply with our comparables, or be competitive with our comparables, if we were really to move forward with anything more than where we are right now. We think we would have some -- some problems there. I think the goal here is to try to work -- is to ratify this agreement and put ourselves on even ground so we can come to the table and try and work through a solution on healthcare without having the labor agreement at stake in the balance.

**Adams:** I would just add by way of my own comment is, and it really sort of keys off of yours, commissioner Saltzman, we got to deal with this issue citywide. The healthcare issues citywide with all the unions at once. That's my personal opinion. I've held it for quite a while now. Because to expect a union, a single union, to negotiate with us and face their peers, they in effect are negotiating on behalf of all the unions, and we should just acknowledge that and -- and calibrate our discussions with them accordingly. And that is we should be talking to all of them at once.

**Deckard:** Yeah. I mean our goal here is once -- you know, once we've put this agreement to bed is to sit and work with the lnbc, as well as other stakeholders that we have in a more collaborative process to see, you know, how we can craft a solution that will be in the best interest of our city and employees and unions before we can to the table in january with our four other bargaining groups that we have open. So we, you know, hope to be sitting with council in our november executive session when we talk about our strategy going into our next bargaining process in january, after having had a chance to do some additional work with the unions so that we actually have a solution that's viable.

**Adams:** And I also agree with you, commissioner Saltzman, that this issue is so big, and there's so much at stake for our employees and for our good stewardship, financial stewardship of the city, I do believe that our initial meeting should be with our staff and the leaders of the unions and the city council themselves to begin to lay out some principles for folks to work with on a citywide basis on this issue. This is a huge issue. And it requires, I think, our personal attention on the city council, at least to establish some mutual agreements on how the rest of the process should go, the principles in which the rest of the process should operate.

**Saltzman:** Between the original offer and the final offer, we added another kelly day to the package.

**Ruttledge:** That's correct.

**Saltzman:** Why did we do that? Kelly day is more or less a paid day off, an extra paid day off.

**Deckard:** Between -- you're referring to the -- ok.

**Saltzman:** Let's say between the original offer, it was rejected by the firefighters --

**Deckard:** Two kelly days on a two-year so.

**\*\*\*\*\*:** There wasn't additional. And the kelly day is more of an hours reduction for the workweek rather than --

**Saltzman:** So we had three in -- at one point I thought we only were talking about one.

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**Deckard:** No. The original tentative agreement that we reached in december had three kelly days.

**Saltzman:** Over three years?

**Deckard:** Over three years. We -- in this agreement that we were able to reach, the pffa actually recommended two kelly days. We did have some discussions in executive session about one kelly day, but the original was actually three kelly days, and then we dropped down to two.

**Ruttledge:** The other piece, too, is that the kelly days in the original tentative agreement I think were going to be implemented in october of this year. With this tentative agreement, the two kelly days, one different, one less, is implemented on june 28 of next year. So there's a -- there's a backdating in terms of the implementation as well.

**Saltzman:** The original three kelly days for a three-year contract, as I recall, had substantially different premium-sharing of health insurance arrangements than 95/5, didn't it?

**Deckard:** Yeah. The original tentative agreement actually, because it was a three-year deal, it was able to move us into the third year, or step, of which the council had adopted. We also had three kelly days there. Because we're at a two-year deal now, we have two kelly days, but because it falls short of that third year then we are at the second year of what council adopted in december.

**Saltzman:** So just a matter of opinion, do all of you agree that, as was said I think in one of our executive sessions by tim grew, that a 95/5 healthcare arrangement that we have now is unsustainable over time? You know, i'd ask all three of you for your opinions on that, is unsustainable from a revenue point of view.

**Deckard:** I believe a straight 95/5 from now until --

**Saltzman:** End of time.

**Deckard:** I beoive that a straight 95/5 from now until eternity, just moving forward, is not sustainable, but I don't believe that that's the goal. I don't think that's where the city, nor the union, is trying to go. I think what we're doing is we -- if we look at the plan that council adopted back in december, we took that concept in the first two years of that concept and put it into this labor agreement. We also know, as I referred to as the comparables, that our comparables right now support that we're at 95/5. And, you know, it is in the forecast right now, and so it does not present an unnecessary economic hardship for the city at this time, but I think it really does give the unions and the city the time to work together to try to come up a -- and craft a solution to our healthcare issues that we need to do.

**Adams:** And I would add, we got to get out of the past way of thinking on this, in my opinion. The city has not had a wellness program since i've worked for it, a meaningful wellness program. And we're reaping, you know, some of the high costs that comes when you're an employer without a meaningful wellness program. That won't -- or won't necessarily yield savings potentially right away, but there are innovative approaches to this that are win-win in other public jurisdictions around the country. King county requires employees to have a medical checkup and every employer for king county has a personal health plan that they must follow, and it has the potential to yield them, according to their estimates, significant savings. So if we can get the responsibility for - - if we can reward those employees who take care of themselves, we have the potential to save a lot of money. That's thinking very differently than we have up until this point thought about our healthcare. I think that kind of creativity is what i'm interested in. I'm certainly not interested in perpetuating the status quo in terms of keeping our employees healthy and having to pay for that.

**Fenders:** The fire bureau has already sort of implemented a wellness program through the grant from ohsu, and some of the information coming down to the fpd&r panel and things, they've shown that it has had a dramatic impact on the fire bureau personnel. So we're anxious to see this move citywide, and the benefits of that, although long-term, we believe will be quite dramatic.

**Adams:** Additional comments or questions from the council?

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**Leonard:** Yeah. I'd like to say a couple things. I mean, these kinds of agreements depend in large degree on relationships and trust. And that's my opinion. And where we have good relationships with employees and trust, we get agreements that reflect both sides' best interests. Where you have distrust and suspicion, you get agreements generally settled by a third-party that neither side likes very much. We've seen recent really horrible examples of that. This agreement, I want to be crystal-clear, I don't want anybody to imply or suggest that this agreement does not reflect the council policy that we've adopted on healthcare. It does. There's no getting around that. It does. We all supported that. The third year of the agreement doesn't exist. So when we sit down at the table and start bargaining, I would suggest that the council consider unifying a positive message of collaboration and trust and not sending a message today that we don't trust the firefighters or the police or the water bureau workers, or whoever, that they'll bargain in earnest when this agreement comes up to be renewed. That ironically is one of the elements of causing an agreement not to come together. So i'm a little concerned with what i'm hearing here today, because that doesn't cause better agreements for the city. The experience of the city has been it pays for comments and attitudes like that. I would hope we would all come together as sam has pointed out and work for a solution, because my experience is when we do that, treat people the way they want to be treated, we get solutions that work. As far as the healthcare, or proactive wellness program, you'll notice on the agenda a little later today, I had to introduce an ordinance in order to allow the water bureau employees to use the workout room for free. I got absolutely no support or help from any organization in this city to just administratively allow employees to use the workout room for free without having to pay for it. So I don't understand how on the one hand we can all recognize we have to have proactive wellness programs, and then when we have equipment make employees pay to use it. We ought to be creating incentives for employees to do things to keep themselves healthy. When this comes up later this morning, if somebody wants to amend it to include all workout facilities in the city, because this only speaks to water bureau workout facilities, where employees are currently being charged to use them, for instance at the Portland building, I would really happily entertain that motion, because that's putting our money where our mouth is.

**Adams:** Thank you. Any additional comments or questions for our panel? All right. This is a nonemergency and moves to a second reading. Karla, item number 1136.

**Item 1136.**

**Adams:** I'm going to give you like 30 seconds each to talk about the reasons why we should do this, answer any questions from council, and then vote on this one, because normally this would be on consent, but because we don't have the necessary majority up here in attendance.

**Darian Santner, Bureau of Environmental Services:** Ok. Good morning. I'm darrien santner, with the bureau of environmental services.

**Jeanine Stanton:** Jeanine stanton, ohsu.

**Santner:** Before you are a couple of agreements that -- and one ordinance -- that will allow ohsu and the city of Portland to team up on some revegetation projects on ohsu land. The goals of the projects are to reduce invasive species cover, water quality improvement, and habitat enhancement, and the projects will be implemented over a five-year period. The work will be done by the bureau of environmental services revegetation program, staffing contractors, and will be funded by ohsu. And these projects have stemmed from the july 2004 council adopted memorandum of understanding between the city and ohsu that acknowledged that we have these goals in common, and we are going to put some projects together on the ground to implement them, and that is what we're doing here. Quickly, I would like to recognize and thank on behalf of b.e.s., ohsu for their time, energy and commitment to working together with us so doggedly, and being actively involved in improving the condition of their campus's natural resources. They set a great example, I think, for other organizations and institutions around the city. And we're confident that this partnership will be fruitful and expand to include other areas around ohsu and marquam hill.



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**Adams:** Thank you.

**Stanton:** I would just like to add that this is an excellent example of a success story for m.o.u. This has been a very collaborative effort with b.e.s. and darrien specifically, and bureau of development services. We're excited to implement this. It's really part of our long-term mission to protect our environmental land on the hill. So we're -- we're very excited about this, and we're very appreciative of the city and the collaboration.

**Adams:** Thank you for being such a good partner. Any questions or comments from council? Thank you. Karla, would you please call the roll.

\*\*\*\*\*: This is the first reading of a nonemergency ordinance?

**Adams:** Thank you. Let's move to item 1137.

**Item 1137.**

**Adams:** Does the council have any questions on this item? Then it's a nonemergency as well, so it moves to a second reading. All right.

\*\*\*\*\*: Item number 1138, second reading. This is a second reading. Please call the roll.

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye.

**Adams:** We go to item number 1138, second reading.

**Moore:** We just did that one.

**Adams:** Oh, sorry, 1139 report.

**Item 1139.**

**Adams:** Good morning. I'll give some brief introductory comments and then we'll hear presentation by sue keil, director of the office of transportation. Pdot, as the city's transportation office is known, has identified a nearly \$8 million funding gap in the 2006-2007 fiscal year. It totals over \$40 million funding gap over the next five years. The cost increases in the forecast are driven by three factors -- declining share of gas tax revenues, inflation, particularly in construction materials, likely to go up now with the hurricanes in the gulf coast, and other new requirements. The gap requirements and resources can only be closed by adjusting the budget by cutting the budget. The general transportation revenue, g.t.r., for pdot, comes from gas taxes, parking meter revenues and citations. The legislation hasn't passed an increase to the motor fuels tax since 1993, and the city does not have the authority to enact a city gas tax or registration fee. Parking fees were increased this year, however starting in 2006-2007 revenue from this increase was dedicated for the Portland mall revitalization project, the options for additional revenues, increasing parking fees are limited. So what we're here today is to start the budget process for the office of transportation early. We do that by seeking qualified consultants through an r.f.p. process to work with the bureau and its take holders to identify the highest priority of transportation services and the short-term and long-term priorities for budget cuts within expenditure packages. The task force that is created also as part of this resolution will include stakeholders and other bureaus that are partners with pdot and directed by the facilitator we will come up with a list of priorities. We will fund to meet those priorities and in the process we will seek savings in all the operations of pdot that are not important to the achievement of those priorities. This will result in recommendations -- new recommendations of a new pdot for programs, projects, and ultimately the budget to the city council before the regular budget process and into the regular budget process after the first of the calendar year. Someone who's been working very hard in helping me conceptualize this and doing a great job is the interim director, sue keil.

**Sue Keil, Interim Director, Portland Office of Transportation:** Frankly, commissioner Adams, you've said most of what needs to be said in regard to this, but essentially it's important that we deal with this process now so that we can have a result that could be reviewed. We'd like to send out that r.f.p., which is a formal r.f.p., but not over the -- the trigger level that requires council vote on it right away, so that we can get a consultant on board who is able to work with us through this process. Because of the broad range of stakeholders that will be consulted on this matter, it's going

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to take a little more time, and we have a big issue to deal with, that actually that reduction amounts to something in excess of 18% of our general transportation revenue. And so we will have some issues that -- that we'll probably be wanting to talk to council about relative to items that have been funded out of the transportation budget in lieu of being funded out of general fund. So we'll be talking about those as we come along.

**Adams:** And I think it's obvious, but should be noted for the record, that we are compelled to do this at a time when we are facing a 21,000-block backlog in street maintenance, hundreds of -- or dozens and dozens of miles of unimproved streets. This couldn't come at much of a worse time, but we have to do it. And we hope to do it in a way that we can still make some headway on those deficits in terms of maintaining the infrastructure of the city, the transportation infrastructure of the city, and providing for Portlanders the mobility and predictability of that mobility, of being able to get from point a to point b in a predictable time frame as much as we possibly can.

**Keil:** No matter what kind of transportation you're using.

**Adams:** No matter what kind of transportation you're using. So any questions from council.

**Saltzman:** So what is the estimated fee for this proposal, or consultant?

**Keil:** My number? I'd like it to be around \$40,000.

**Saltzman:** A lot of work for \$40,000.

**Keil:** It is a lot of work.

**Saltzman:** What's the threshold for council approval?

**Keil:** Over 100. More money I can save, the less I have to cut, let's put it that way.

**Adams:** The other thing is I wanted to bring this to council, even though i'm not required to, because I wanted to make sure that council was comfortable going ahead on an earlier timeline, and also if it does go over, we're going to come back to council. The savings that we achieve from this obviously we'll need to pay for the cost of the consultant.

**Saltzman:** Do you envision coming back for approval over \$100,000 you mean?

**Adams:** Uh-huh.

**Keil:** If the bids come in over that we would have to.

**Adams:** Yeah. Our hope is we won't have to.

**Keil:** Yes. I mean, goodness, I don't want it to be that high. I mean, we will do a lot of the legwork in --

**Saltzman:** Who are the firms that you envision are the likely proposers?

**Keil:** I don't know. It's open, competitive, and so --

**Saltzman:** Give me an idea. Who are the cast of usual characters?

**Keil:** This is quite unusual. The county did something similar to this last year.

**Adams:** There's a robust set of consultants that work in the transportation field, everyone from the kittleson, the evans, the l.t.k. There's the group that did the county work. There's -- I mean, we're putting this out there because we know there are a lot of consultants and a lot of -- we hope significant competition for this that will help us get a good price.

**Keil:** And they don't have -- I mean, some of the people who have bid on this type of thing, as far as we are aware, have been not necessarily transportation consultants, but people with knowledge of transportation who are consultants in strategic planning and financial management.

**Adams:** Hopefully we'll get good competition.

**Saltzman:** My last question was, you have a very good pie chart in here on the expenditures for the office of transportation, but I didn't see anything -- and you break out various categories, like pers contribution, debt service. What about healthcare costs? What percentage of your expenditures is healthcare?

**Keil:** Ken is here.

**Adams:** Ken will have the answer.

**Keil:** Ken, do you have the answer?

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**Saltzman:** If you don't have the answer, i'd like to get it, let's put it that way.

**Keil:** We can get it for you. Do you know just off the top --

**Adams:** We're voting on this today.

**Saltzman:** Oh, I know, that's all right. I'll support it. I'm just curious.

**Ken Kinoshita, Office of Transportation Finance:** Office of transportation, finance. It's -- because we do a lot of work for other agencies, the impact of the -- some of the health benefits is less -- dampened by the fact that we -- we can build some of those --

**Keil:** Charge it out.

**Kinoshita:** Right. And so it's -- phew, I don't know. We have about \$40 million, approximately, in f.t.e. costs. And so it's typically -- benefits are what? 30%, 33% of that figure.

\*\*\*\*\*: Uh-huh.

\*\*\*\*\*: And then health being --

**Saltzman:** \$10 million to \$15 million?

\*\*\*\*\*: Yes, a piece of the total fringe package.

**Adams:** We can get the commissioner the --

\*\*\*\*\*: Yeah. We can get you the exact number on it.

**Saltzman:** I appreciate it for my own information. It's not going to hold up my support for this today, but if you could get that for me i'd appreciate it.

**Kinoshita:** I sure will.

**Adams:** Any other questions or comments from council?

**Keil:** What we're really looking for is if we go through this process and review the results with you, that we would not need to go through the additional budget review process. Is that right, commissioner Adams?

**Adams:** That will be up to council to decide how good of a job we do. We will also be inviting folks from their offices to participate in this as well.

**Keil:** Absolutely.

**Adams:** That will be up to council. If we don't do a good enough job or some new additional conditions that arise that we don't anticipate, that will be up to council. That would be our hope, but that --

\*\*\*\*\*: Nice not to have the double jeopardy.

**Adams:** Thank you.

\*\*\*\*\*: Uh-huh.

**Adams:** Karla.

**Moore:** Nobody signed up. Do you want to do roll call?

**Adams:** Please. Aye. **Leonard:** Aye. **Saltzman:** Aye.

**Adams:** Appreciate it very much. Thank you. Item 1140.

**Item 1140:**

**Adams:** Call the roll. Aye. **Leonard:** Aye. **Saltzman:** Aye.

**Adams:** That gets us to item 1141. Second reading. Please call the roll.

**Item 1141.**

**Adams:** Aye. **Leonard:** Aye.

**Saltzman:** I just want to commend cmts for the excellent work they've done for the city. Aye.

**Adams:** That gets us to item 1142, second reading. Please call the roll.

**Item 1142.**

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye.

**Adams:** Item number 1143, second reading. Please call the roll.

**Item 1143.**

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye.

**Adams:** Item 1144. Commissioner Leonard?

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**Item 1144.**

**Leonard:** We don't have a presentation, unless you have questions.

**Adams:** All right. This is a first reading of a nonemergency, so it moves to second reading. Thank you. Item number -- thank you. Nice to see you. Good work. Item number 1145, first reading. Commissioner Leonard?

**Item 1145.**

**Leonard:** As I mentioned earlier, this is a strategy to create incentives for employees to use our workout facilities, because it isn't just my opinion, but I think the research shows that those individuals who are in good physical condition need expensive medical procedures less often. And I unfortunately discovered when I told the managers of the water bureau to discontinue taking the payroll deductions to do that, that I needed to introduce this ordinance. As I mentioned earlier, if anyone wanted to wade into the Portland building, where this condition exists, I didn't feel comfortable doing that, because that's not my province, I'm more than happy to entertain that motion. I think if we're really serious about healthcare costs we need to be proactive. And I can tell you for myself, I benefited greatly from the proactive program that you heard Jack Finders talk about that the fewer bureau uses. I had a medical condition discovered as part of that that I was told saved my life. So this kind of activity on the part of the city, if it were to be done citywide, doesn't just save money, it potentially will save lives as we encourage employees to exercise. I'm a great believer in us doing what we can to support our employees to do that. So --

**Adams:** How would we amend it so it would do that?

**Leonard:** By saying any facility currently being used by city employees, where there is a requirement that they pay, no longer applies.

**Adams:** Are you comfortable with that?

**Saltzman:** Not without having all the facts in front of me.

**Adams:** Ok.

**Leonard:** So it's a first reading.

**Adams:** First reading. So I can move an amendment. We need a second. We need a majority vote of three.

**Leonard:** Yes.

**Harry Auerbach, Chief:** You need three votes to take any action.

**Adams:** So the first reading, any questions or comments from any member of council? Anything you'd like to add?

**David Shaff:** No, other than this was one of the very first things that came to us, commissioner Leonard and me, the very first time we met with the interstate employees, this question came up, and we made a commitment right then and there that we would act on it.

**Adams:** And I'm willing, when I'm able to do so, I'm willing to amend it necessary to provide the kind of access that you seek for all city employees. And I really commend you for bringing this forward. We'll either have a wellness program or we're not. We're either going to invest in it or we're not.

**Leonard:** I really appreciate that.

**Adams:** This moves to second reading. That was 1145. That concludes all the business we have for this session of council. We'll reconvene at 2:00 p.m. This afternoon. It looks to be a rather lengthy appeal. Item number 1146. We stand adjourned. [gavel pounded]

At 10:42 a.m., Council recessed.

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**Closed Caption File of Portland City Council Meeting**

This file was produced through the closed captioning process for the televised City Council broadcast.

Key: \*\*\*\*\* means unidentified speaker.

**SEPTEMBER 28, 2005      2:00 PM**

**Adams:** We will be considering only one item. That item is 1146. Karla, please call the roll. [roll call]

**Item 1146.**

**Adams:** If you'd please introduce the council item.

**Adams:** We will first hear the order of procedure and other preliminary matters from the city attorney's office.

**Kathryn Beaumont, Sr. Deputy City Attorney:** These announcements pertain to the kind of hearing we're having today, the order of testimony, and some guidelines for presenting testimony. First, this is an on the record hearing. This means that those people who testify must limit their testimony to material and issues in the record. During this hearing you may only talk about the issues, testimony, exhibits, and other evidence that were presented at the hearing before the hearings officer. You can't bring up anything new. This hearing is designed only to decide if the hearings officer made the correct decision based on the evidence that was presented to him. If you start to talk about new issues or try to present new evidence today, you may be interrupted and reminded that you must limit your testimony to the record. In terms of order of proceeding, we'll begin with a staff report by Fabio from the bureau of development services staff for approximately 10 minutes. Following the staff report, the city council will hear from interested persons in the following order -- the appellant will go first and will have 10 minutes to present the appellant's case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to the city council. After that, the applicant will have 15 minutes to address the city council and rebut the appellant's presentation. After the applicant supporters of the applicant may testify, and again, each person will have three minutes. Finally, the appellant will have five minutes to rebut the presentation of the applicant. The council may then close the hearing, deliberate, and take a vote on the appeal. If the vote is a tentative vote, the council will set a future date for the adoption of findings and a final vote on the appeal. If the council takes a final vote today, that will conclude the matter before the city council. I have a few guidelines for presenting testimony. A reminder, this is an on the record hearing, which means you have to limit your remarks to arguments based on the record compiled by the hearings officer. You may refer to evidence that was previously submitted to the hearings officer, you may not submit new evidence today. If your argument includes new evidence or issues, the council will not consider it and it will be rejected in the city council's final decision. If you believe a person who addressed city council today improperly presented new evidence or presented a legal argument that relies on evidence that's not in the record, you may object to that argument. Finally, under state law, only issues that were raised before the hearings officer may be raised in this appeal to city council. If you believe another person has raised issues today that were not raised before the hearings officer, you may object to the council's consideration of that issue. That concludes what I have to say.

**Adams:** All right. We next determine whether there are any stated conflicts of interest here on the city council. Do we have any members of the city council wish to declare a conflict of interest? Hearing none, we then ask the question regarding ex parte contacts of the city council. Do any

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members of the council have ex parte contacts to declare or information gathered outside this hearing they wish to disclose? I hear none. We are then going into the presentation by fabio. Unless there are any other questions or any other preliminary matters that the council members wish to take up before we hear from fabio.

**Adams:** I hear no other initial questions, so fabio.

**Fabio De Freitas, Bureau of Development Services:** Thank you, commissioner Adams, good afternoon. Good afternoon commissioner Leonard and commissioner Saltzman. I am fabio with the city of Portland, b.d.s. staff. We're here today to discuss land use review, a proposal for subdivision with adjustments associated with the subdivision review. My computer fell asleep on me, i'm sorry.

**Adams:** Happens to the best of us once in a while.

**De Freitas** There we go. So we are here to consider today the hearings officer's decision to approve with conditions a six-lot subdivision for detached houses and accompanying adjustments. On the screen before you now are the players involved today. The appellant, the maplewood neighborhood association, the applicant, mr.s Bob whitaker, and his representative, chris goodell. Summary of the proposal for the land division, the applicant is proposing to create a six-lot subdivision with a new private street and storm water management tract. The proposed lot sizes will range from 6,208 square feet to 16,181 square feet. The existing house closest to southwest vermont will remain on the site on proposed lot six. And there's a second house currently existing on the site that will be removed. In addition to the request for the subdivision, the applicants also seeking approval for a number of adjustments associated with the existing house that's going to remain on lot six. Those adjustments are for -- to adjust front setback standards, and the standards for street-facing facades. The summary of the maplewood neighborhood association appeal, they've listed the following items as their points of objection to the hearings officer's decision, which includes environmental impacts, density and lot size, transportation impacts, adjustments, and the protection of existing housing stock. I'll get back to this slide momentarily to address these issues. The map before you is our city zoning map. I wanted to emphasize, i'll be doing so throughout the presentation, this is the site in the middle of the map. You'll see the site is zoned r-10. There's r7 zoning to the south and open space zoning to the north. There's a creek that runs east-west north of the site across southwest vermont. Again, the site and its current zoning is r10. I wanted to show you this map because one of the issues that the hearings officer had to address was the fact that the site is in potential landslide hazard area, so we have this site here, and because of this little corner of this pixel on our map, it drove the applicant to provide us with landslide hazard study. The neighbors have claimed that one of their issues of objection is land suitability, suggesting that the proposed subdivision is going to cause landslide and other natural issues with the site.

**Saltzman:** Is the natural drainage of that topography north, towards the creek?

**De Freitas:** That's correct, northwest. Here's the existing site as we know it today. Commissioner Saltzman to further answer your question. I believe it's approximately a 40-foot difference in elevation from the southern tip of the site to southwest vermont. So the existing house that will remain on lot six is this one here, this house towards the southern end of the site is going to be demolished. As you see, there's a scattering of trees throughout the site. I'll note to you at this point that the house is oriented towards southwest 63rd avenue. That's important for the discussion we'll have regarding the readjustments.

**Adams:** Before you go much further than the potential hazard slide, the fact it's only a tiny -- a relatively small amount of the box, can you tell me what the significant of the box is and in your professional opinion should we view that so little of it is in the lot as a technicality more than a technicality, or significant concern from your professional point of view?

**De Freitas:** It's a technicality. The way we've practiced -- we have been practicing addressing landslide hazard designations across sites is whether or not it's touching the site like this in a little

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tiny corner, or if the entire area is designated with the landslide hazard designation, we have had our applicants perform the same level of geotechnical and geological investigative work to address the approval criteria.

**Adams:** Thank you.

**De Freitas:** This is the proposed configuration of the lots. We're talking about six lots all together with a new private street along the north western property line of lot six is a proposed storm water facility. Pdot has required the applicant to make improvements to both the 63rd avenue and vermont street frontages of the site, which will result in additional storm water facilities along both street frontages.

**Adams:** Does that include sidewalks?

**De Freitas:** There will be a requirement for sidewalk and curb improvement, that's correct. I'm just going to blow through this slide real quickly. I'm sure the applicant can give you a much more detailed description of what the storm water proposal is. For the individual lots themselves, these are flow-through planters that will be piped within the private street that will be conducted into the water quality swale. We've got these public swales again that are going to be constructed to address the public street improvements. Proposed clearing and grading plan, the primary grading activity will occur within the area of the proposed street. The water quality swale and the stockpile area along lots one and two. This is the proposed street preservation plan as referenced in the hearings officer's decision. There are a number of trees proposed to be saved on the site to meet the code's tree preservation requirements. You'll see the trees surrounded with their root protection zones as those trees scheduled to be preserved to meet those requirements. On your screen now is a list of land division approval criteria we looked at during our phase of the view, our recommendation to the hearings officer, and also his decision, those highlighted here, those are aprickable approval criteria. Relative to those approval criteria, zoning code section that's list order your screen now states that land use review applications are reviewed under regulations in effect at the time the application is filed. I want to make this statement clear, because there has been testimony in the record at the hearings officer's hearing, and i'm sure we'll hear about it today also, relative to zoning on the site prior to the southwest community plan becoming effective. As I mentioned earlier, we are talking about a site that is zoned r10 and this table comes from our zoning code and under the r10 standards, as you see here, the maximum lot areas for newly created r10 zoned lots is 17,000 square feet, and the minimum requirement for newly created r10 zone lot is 6,000 square feet with the other dimension requirements listed. On this table you'll see referenced the proposed lot sizes, and also you'll see all the these lot sizes fall within the range that is available to any applicant proposing subdivision or partition in the city, in this zone district, as well as all the other zone districts found in the code. On your screen now are the adjustment approval criteria that the hearings officer had to consider and that you'll be considering also today. And we're back with the appeal issues that have been raised by the neighborhood association. I want to note that the items underlined are those items that had supportive information included in the appeal documentation by the neighborhood association. All the other items were simply listed, so i'm not going to assume what those issues were with the neighborhood association, but I will address the matters as they obtain to the city's review. Relative to storm water, you'll hear today from the neighborhood association that the applicant has not provided sufficient information for the city to consider whether or not the proposed storm water, management system for the subdivision is adequate. As evidenced in the record, by the hearings officer's decision and support of documentation from our service bureaus, the numerous storm water management approval criteria had been satisfied. The proposal for the tract b storm water swale for the planter boxes for the individual lots for the swales and the public right of way all satisfy the code's criteria for storm water management. Regarding the comment about slide and soil erosion, the appellants used the storm water issue as creating issues relative to slide and soil erosion on the site. Slide and soil erosion refers to the conditions

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geologic or geotechnical conditions of the site, which due to the landslide hazard designation on the site, the applicant was required to submit the appropriate study to us. Prepared by geotechnical engineer, and it was reviewed by city of b.d.s. Staff and determined to be sufficient at this point in time. The conclusion of that report is in fact included in your -- in the hearings officer's decision concluding that the proposed subdivision is geotechnically feasible. Regarding trees, suer, clearing, and grading, these matters were not further identified or explained in the appellants documentation, so i'm not going to assume what those issues were in their mind. Relative to trees, we reviewed the tree preservation plan. The numbers all work out, they're satisfying option one, and preserving at least 35% of the trees on the site. There's adequate sewer capacity in both southwest vermont and southwest 63rd avenue to handle the additional services required by this proposed subdivision. The application has provided the clearing plan. Relative to density and lot size, this is the issue, again, that the appellants have raise the in the past regarding the southwest community plan and what happened at that period in time, and i'll just briefly spend a moment here to talk to you about that. The southwest community plan was an area wide legislative project brought forward by the bureau of planning to look at not only this neighborhood, but a much larger area of southwest Portland to consider rezoning the area. The site was zoned and a larger area was zoned r20 prior to the southwest community plan becoming effective. As a result of the plan, the site and surrounding area was rezoned to r10. The applicants are -- the appellants are claiming that the proposed subdivision is not meeting the intent of the city council's approval or adoption of the southwest community plan. I should note that at the time the southwest community plan was being considered, the rewrites of the land division portion of the code was also under consideration by the city. Both legislative projects were occurring concurrently. It was a matter of six or seven months between the adoption of the southwest community plan and the adoption of the new land division code. With the new land division code as I demonstrated in the table, there's now an allowance for a range in lot sizes in all soning districts across the entire city. As I demonstrated in the table, in the r10 zone, the range is from 6,000 square feet to 17,000 square feet. As demonstrated in the hearings officer's decision, all six lots fall within that range of lot sizes. I just wanted to collar that for you. There's no supportive documentation in the appellants' appeal paperwork. I can tell you pdot looked at this case as they do in all cases, and were able to provide supported documentation to the hearings officer that all applicable approval criteria for transportation-related issues have been met. Relative to the adjustments, which you haven't spent a lot of talking about this far, they are all subject to the existing house that's going to remain on lot one. Knock in the house itself or on the house itself is changing. The reasons the adjustments were required were because the orientation, the configuration of the house relative to the new front lot line on the site is what was changing, and is what triggered these. I should probably go back to the slide showing the house so we can talk about that real quickly. As it is, the house faces 63rd avenue. The applicant is proposing tract b, this water quality tract to address the storm water for the site. So by placing the storm water tract in this location, technically this portion -- this lot line is no longer a street lot line. We don't have a street facing lot line any longer along 63rd avenue. There are two actual front lot lines now. One along the new private street and one along southwest vermont. And so as you are aware, they're based on design standards that need to be applied -- applied to houses whether they're existing or proposed. As a result of these new configurations, some of those were not going to be met. Specifically the front setback which is now measured off the private street, just a tiny portion of the corner of the garage here is encroaching into the 20-foot setback. The house faces 63rd avenue, but technically it doesn't face the street because of the soil in front of it. So the street, there's a requirement that the main entrance faces the street. It's not facing the street. Therefore the adjustment was requested. The other b.z.d. That the applicant needed to address because of this reorientation of lot lines was the front facade b.z.d. That requires a number of -- a percentage of windows and/or doors that face the street. This being the garage is just a couple of small windows



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that didn't meet that 15% requirement. So those are the issues relative to the adjustments. The appellants are claiming that there's going to be a tremendous loss of yard area that there's not going to be a sense of community involvement as a result of these adjustments. In the hearings officer's decision, the applicable approval criteria were found to be satisfied. I can get into a lot more detail if you like, but I'm going to move on.

**Adams:** Sounds good.

**De Freitas:** So we're going to orient you to the site now. This is 63rd avenue looking north toward the intersection with Vermont. The subject site as indicated by the arrow in this area here. This is the house that's going to remain on lot six. This is the front of the house as we know it today facing 63rd avenue. We're looking south along 63rd avenue now or upslope from southwest Vermont, the site being on this side now. There are ditches along both 63rd avenue and along Vermont that currently handle storm water from the street. This is the house that will be removed from the site. Again, another view of the ditch. This is farther up 63rd avenue to the south as 63rd avenue makes a curve or bend in the road, with the side toward the right. Just a couple of slides showing you an example of existing residences in the area. We're looking across southwest Vermont at the intersection with 63rd avenue. Looking east along southwest Vermont and again the ditch in front of the site. I should have noted in the other slide, these are the areas that PDOT has required to be improved, so they'll be curved and sidewalked and the proposed storm water facilities in this area. Looking in the opposite direction along southwest Vermont. A cross -- across Vermont toward the site. Just some photos of the existing house to orient you to what the adjustments are all about. This shows the front of the house which we know it today, which faces 63rd avenue. This is the side of the garage now that will be facing the new private street, which will be the new front facade, which is one of the issues for the adjustments.

**Adams:** While we're look at this, how long is the current owner of the property owned the property?

**De Freitas:** I'm sorry, I don't have that information. He's here today. If he testifies you can ask him, I'm sure.

**Saltzman:** All these trees on the existing house lot will be preserved?

**De Freitas:** No, sir. We can go back to the tree preservation plan if you'd like.

**Saltzman:** Go ahead and finish your pictures.

**De Freitas:** That concludes my presentation. Your alternatives today are to deny the appeal by the neighborhood association, therefore upholding the hearings officer's decision. You can deny the appeal and modify the hearings officer's decision based on review of the record. Or you can uphold the appeal in whole based on the review of the record, thereby overturning the hearings officer's decision and therefore denying the project. Commissioner Saltzman, if you'd like, I can go back to the tree preservation plan.

**Saltzman:** Yes, please.

**De Freitas:** Here's the lot with the existing house that's going to remain. There are a number of trees along the southwest 63rd and southwest Vermont portions of the site. And a lot of shrubs also, which are going to be removed of course to allow the construction of the water quality swale. It looks like it's either this one tree in the center or this -- yeah, it is the one tree in the center of the root protection zone on the existing -- on the lot that has existing house that's going to be preserved.

So it's one tree on this lot, it looks like several trees on lots five, a number of trees on lots four, three and four, and one or two trees on lot two.

**Saltzman:** What would -- certainly the applicant can answer this question too. Looking at the trees on the eastern portion of the property, near Vermont, which would be the rationale, for removing these trees?

**De Freitas:** I can give that information to you. I don't have the report in front of me. It could be because those trees are unhealthy that they're being removed. Which he's absolutely is

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capable of doing without any issues whatsoever. The basic premise of tree preservation plans, as you're aware, commissioner Saltzman is to save a number of trees on the site. There's no requirement in the code that they have to save every tree on the site. There are a number of options listed in chapter 33.630 to satisfy the preservation requirements. The number of trees that are shown here and circled with their root protection zones by our calculations satisfy one of those options. That concludes my presentation.

**Adams:** Any other questions or comments for fabio? We're now ready to hear from the appellants.

\*\*\*\*\*: Are we going to be granted similar looseness with the time?

**Adams:** Yes.

**Dan Cooper:** Good afternoon, city council members. My name is dan cooper. I live diagonal to the proposed development, and I have a bachelor of science in engineering. I am here today to support the maplewood appeal of the hearings officer's decision. I will be speaking in opposition to the proposed land subdivision and development on southwest 63rd and vermont. There have been many statements said pro and con, but ultimately the applicant has not satisfied at least one of the land use codes, specifically 33.653.020, storm water management approval criteria. One of the overarching themes you will hear today in a variety of ways is the failure of the applicant to legally and adequately address the problem of stormwater in this unique watershed area. Now, my specific arguments are twofold. The applicant has failed to meet the relevant storm water code in two key ways. The first error is an assumption that less than 13,000 square feet of impervious surfaces will be added to this land. This is simply not the case. In fact, 23,000 square feet will be added. Yet according to kelly hide of b.e.s. only if the surfaces to be treated are less than 13,000 square feet can the applicant use the storm water system he's proposed. According to land tech's document, included in the handout I gave, the applicant's planner and engineer met with kelly hide, b.e.s., on february 14, 2005, to address the treatment of storm water. Kelly agreed that since the total area of impervious surface to be treated is less than 13,000 square feet, that the simplified approach to storm water management can be used. End of quote. So if less than 13,000 square feet of impervious surfaces are added, the applicant is used to use a smaller system. But it isn't less than 13,000 square feet, it's 23,000 square feet, and there's calculations in the handout you received. Thus the entire storm water treatment proposal that fabio told you about, the water quality swale there, is based on a faulty assumption and is not legally acceptable according to b.e.s.'s own words. The second area involves the faulty impervious surface assumption in the hydrologic analysis, as requested by bds from the applicant. The analysis assumes the amount of impervious surfaces after this proposed development would be 35%. When in fact we've calculated it to be 44%. An error off by 25%. It then uses this flawed value to calculate water flow and water run-off. The amount of impervious surfaces increases by a factory of nearly four, not three, as the report also assumes. This flaw impacts all calculations regarding water flow and thus appropriate treatment analysis. These two flaws represent a fundamental undermining of the feasibility of all of the storm water treatment and disposal solutions proposed by the applicant. The hearings officer's report, quite conspicuously, did not address either of these serious errors. Until the applicant meets the burden of proof that he will be able to adequately address these stormwater issues, I believe upholding this appeal and thus rejecting this application based on land use code 33.653.020, storm water management approval criteria is the most appropriate action the city council can take. Thank you for listening.

**Adams:** Thank you.

**Joann Calfee:** Hi I'm joann calfee.

**Bill Cox:** May I go first? I'm bill cox, the attorney for the applicant. I have to assume from my client that much of this testimony you just heard is not in the record.

**Dan Cooper:** This is in the record.

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**Cox:** I would like to have it pointed out.

**Adams:** Ok.

**Cooper:** I said that the -- i'm quoting from land tech's document entitled adjustments in type three review of a six-lot subdivision, which is in the record, which is where I got it. There's the quote of kelly hide saying that if there's less than 13,000 square feet the simplified approach can be used.

**Adams:** Kathryn?

**Beaumont:** I would have to defer to staff for some guidance as to whether this information is in fact in the record. It is.

**De Freitas:** That might have happened off mic. Staff indicated it was in the record, so we'll proceed.

**Cox:** Okay, just real quick --

**Adams:** Excuse me. You need to clarify. Can you approach so you are on tape?

**De Freitas:** Thank you, commissioner. I believe the documentation that the speaker is referring to is a very early response from b.e.s. that referred to the original storm water management proposal for this subdivision. That's not the proposal that we're currently considering, nor is it the one that the hearings officer based his decision on.

**Adams:** Ok. But it is in the record. Ok.

**Cooper:** I would like to respond to that. This kind of gets back to the theme of ambiguity and the data that we're going to hammer home. As far as I understand, in that record they did end up using the simplified water approach to storm water. And I would certainly like to have fabio show me at what point they changed it.

**Adams:** Your point is well noted and we'll have a chance to clarify that. Yes, ma'am. State your name for the record.

**Joanne Calfee:** I live about a block away from the proposed subdivision. My concern is about the application of our planning codes to this development. I believe in this case the resulting development does not reflect the true intent of Portland's building codes. I oppose the subdivision plan before the hearings officer on July 20 and asked today that the city council uphold our appeal of this decision. The challenge before the city and the planning department is considerable. How can we ensure responsible development without overwhelming the developers with too many rules and regulations? It's a tough line to walk. But Portland's future and our ability to remain one of the most livability cities in America depends on walking that line with grace. A specific area of concern to me regards chapter 33.610 of the code which addresses lot standards. And fabio did a great job of explaining parts of that earlier in his testimony. The code states that, quote, the density and lot dimension standards ensure that lots are consistent with each zone's desired character, while allowing lots to vary -- vary in size and shape provided the planned intensity of each zone is respected. What is the key concept here and how do we apply it? I believe the key concept is consistency. To be consistent, to apply this concept in the context of land use, you must know what already exists. At the public hearing July 20, I asked the hearings officer if he had visited our neighborhood as part of his review. He had not. So today I've brought some photos so you can see for yourselves what the starting point is and applying this section of the code. I'll just flip through.

**Cox:** This is not in the record. I'm going to object. She just admitted it wasn't.

**Calfee:** Ok.

**Adams:** Let me ask a clarification. Fabio, are these photos in the record?

**Calfee:** The photos are not in the record. So we can't show those.

**Adams:** Okay. You cannot show those.

**Calfee:** I don't know how to make them go away. [laughter]

**Adams:** we will avert our eyes.

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**Calfee:** Close your eyes as I flip through these. Don't look at all these beautiful trees and streets. Ok. I'll tell you --

**Adams:** Oh your back okay, did you have more you wanted to add?

**Calfee:** I did.

**Adams:** Apart from the photos.

**Calfee:** I'll tell you what you saw in the pictures you didn't see. You saw trees, larger regular lots and mostly single style ranch story homes. What you don't see is also important there. Aren't sidewalks, curbs, or street lights, and most of us that live in the neighborhood like that, it's one of the reasons we moved there. The neighborhood is not like many parts of Portland where there is a tight grid with small lots and large craftsman style homes. Much of Portland's success is due to the wide visual diversity of our neighborhoods. And I believe that it is the intent of the code to perfect -- to protect that diversity. So is it consistent in a neighborhood with an average lot size of 14,000 square feet to permit two lots under 7,000 square feet as this development does? Did the hearings officer respect the zone's desired character in determining the lot sizes? I think what we have happening is there are a couple of standards within that section of the code. One is a mathematical formula that says you go from 6,000 to 17,000, the other is the more ambiguous part of the code. Another interesting aspect is that part of the character of a neighborhood is also established by the size of the homes and their positioning on the lots. I did an analysis of the existing homes on 63rd, which are in keeping with the rest of the neighborhood, and what I learned was that on average, the homes only occupy 11% of their lot size. If we took that 11% ratio and applied it to the new proposed lot sizes, on the two smallest lots we'd end up with houses of 686 square feet and 733 square feet. I doubt homes of this size would be economically viable for the developer to build. Therefore what we're likely to see are much larger homes on these smaller lots. Which is not in keeping with the character of our neighborhood. This is just one example of the lack of rigorous shown in the hearings officer's decision. What we will show you today is that this lack of rigor is a partner throughout the decision that warrants the upholding of our appeal. Thank you.

**Adams:** Thank you very much.

**\*\*\*\*\*:** May get a display?

**Adams:** Sure. While you're -- could you say your name into the microphone?

**Gordon Trapp:** Gordon trapp, i'm a retired engineer and architect. I formerly served for 10 years on the Multnomah county planning commission. I come as a representative and member of the maplewood neighborhood association. Let me get into some of the questions that we are searching for. On page 5 of the hearings officer report it says, "no minimum density is required for these sites." I think the staff explained to you that there was a landslide hazard situation there, and there seems to be some disagreement as to the definition of landslide hazardouses, because especially on vermont street, the banks there are about 10 foot high, and I think they could slide if the conditions were right. Anyway, we say that there absolutely is a minimum density for these properties. The reason we maintain that is that the city council on november of 2001 set it at 10,000 square foot minimum for the -- our watershed area. We had a special hearing and it was a unanimous decision, and the council said it should be that way. The purpose was for the protection of vermont creek and the situation there as dan is pointing out for you. You'll notice on the north side of very mont creek, look at all the protection that is given to that. Assists r10 and special areas, a, b, c, and over on the south side of vermont street, virtually no protection. At the time just before that hearing, though, the planning commission had approved that -- or recommended to the council that three lots along vermont street be classified for environmental protection. But by this action of the council we maintain that this 10,000-square-foot minimum was a minimum, because the section 33 rewrite project was not completed, and the tables that were shown to you were not in effect. And also, the council had the decision there, they were using r7 zoning all around that watershed area, and if you studied the map carefully you would see this is true. Now, let me go on. We do maintain, then,

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because of that, the standards section 33.605 through 33.612, are not satisfied. Also, the following approval criteria are not satisfied for a couple of -- number of other items we'd like to all your attention to. Storm water manual section 161 is not satisfied. It has to do with extra soil erosion and storm water runoff, and dan tried to explain part of that in his decision. Swale location, section 33, 653.020, page 13 of the hearings officer. This swale location is not in an appropriate location. We need to show you here on lot one and lot two, now, this is the original platting, not what the applicant has with his lot layout. But the swale -- the majority, 95% of the runoff water comes from tax lot 7, which is the south lot there, and it -- with the development proposed, it will have five houses on it. So 95% of the runoff water, there's a road there, in addition, contributes to that. And as was mentioned by a calculation made, there is nine times more impervious area on lot seven under development. And we think that's a very significant factor. So we're saying the swale location is not at the appropriate location. With regard to preservation of trees, the whole new tract b, which is extends around onto vermont street and also on 63rd, as we understand, l. Have every one of the trees removed from that. And those enthusiast truce that are existing there now, serve a very good purpose to the residents they're now. It shields them in the noise of trucks raw longer is mont street, and even keeps out some of the fumes and is very important to that. And to take all of those trees away from there is certainly seems to us that the 10-foot high or approximately that bank on vermont street, the whole root system we've taken out, is so there will be soil erosion important sure depending on how they cut the banks back. They might not slide, but it's certainly detrimental to them. Item four, regarding reduced density, section 33, 632, 100.

**Beaumont:** Commissioner Adams, excuse me. The appellants have run more than four minutes over their allotted time, so either they're using up their rebuttal time or you'll need to grant the applicant additional time as well.

**Adams:** I was going to give them 30 more seconds.

**Beaumont:** Ok.

**Trapp:** Thank you very much. Dan, would you turn the map around, then, please? With your own eyes you can see damages that can be done to the house there. We have later speakers who will explain those damages to you. We maintain that the adjustments are a sham, to get more lots. That house faces on 63rd street, and the city is trying to tell you that just now, because -- with the new swale there, it would face on the lot line, so it doesn't fate that -- face that street. What a ridiculous statement to make. The swale location --

**Adams:** I need you to wrap up, sir.

**Trapp:** Thank you for listening. Please protect us and -- with the protection of this environment, and please respect the 2001 city council decision and deny the adjustments. Thank you.

**Adams:** Thank you, sir. We're now going to hear from proponents, supporters of the appeal. You will each have three minutes.

**Moore:** Come up three at a time.

**Alexander Lungershausen:** Hello. My name is Alexander lungershausen, i'm a registered architect in the state of Oregon and I live within half a mile of the proposed addition. I am here to support the maplewood appeal against the hearings officer's decision to allow the subdivision. I want to talk about the degradation of the qualities that were designed into the existing house on tax lot 1 by the proposed alterations. The bottom line of the proposal is to move the street access to the house from the west to the south to allow the construction of the proposed swale. After all is said and done, the south face of the garage will be facing the proposed private way. Even though we will not actually see the garage door, all that is facing the access street will be the south side of the garage. What has become known as the snout house regulation which was quoted earlier, title 33, planning and zoning code chapter 33.110.232, addresses the acceptable relation between the street facing facade of the residence and the garage standards with the intent to enhance public safety and provide community interaction as well as ensure that the pedestrian entrance is visible or clearly

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identifiable from the street by its orientation or articulation. By allowing moving the access to this residence to the south side, none of these goals, which are at the heart of these regulations, are being taken into consideration. Secondly, even though lot dimension standards, chapter 33, 610.200, table 610-2 that was shown earlier as a slide, although a size variance in an R10 zone area to vary from 17,000 square feet to 6,000 square feet, the reduction of the lot size of tax lot one by trimming out a wedge on the east side, and it can be seen there, it's an orange piece, trimming out a wedge on the east side, will ruin the outdoor space for the existing house as well as create a difficult to utilize new lot proposed on its east side due to its poor proportions. Furthermore, by eliminating the existing tree growth along 63rd avenue and Vermont Street, we talked about that earlier to get that swale in there, basically all the trees have to go, creates the proposed swale, the natural sound barrier of the existing trees and the natural habitat, by that matter, will be completely lost. Last point is that the proposed driveway, which is being cut and curved to reach the existing garage, will make it impossible to have off-street visitor parking without hindering the use of the garage which will increase the amount of street parking. The remaining new proposed lots in the subdivision will be half the size of the surrounding lots, standing in violation of code 2, policy 2.21 that calls for single dwelling units with conditions that preserve the character of the neighborhood.

**Adams:** I need you to wrap up.

**Lungershausen:** The character of the neighborhood are one-story ranch. Thanks for your attention, please support the appeal of the maplewood neighborhood association.

**Adams:** Thank you.

**David Wolf:** Good afternoon. Thank you for hearing our appeal. David Wolf, I'm a resident of the maplewood neighborhood, and I'm also a registered architect in Oregon.

**Adams:** A lot of architects in this neighborhood.

**Wolf:** There are. We like the neighborhood, that's why. That's why we're there.

As an architect, I deal with development projects all the time, and I certainly understand and support the right of owners to responsibly develop their property to me the key issue is responsible development. When I'm involved in development the first thing I do is contact the neighborhood association. To explain what I'm trying to accomplish and to address their concerns. Dialogue is crucial. In this situation Mr. Whitaker chose not to use that approach. If he had we would not likely not be here today. My neighbors have outlined the specific shortcomings of the hearing officer's approval of this project. My concern is that if you allow this project to move forward to cut almost all of the mature trees to remove up to 10 feet vertical feet of top soil at the corner of 63rd and Vermont, and to add thousands of square feet of impervious cover, by the time everyone realizes that our concerns were valid, it will be too late and the damage will be done. Would you rather be forced to clean up the damage done when Vermont Creek floods, from the runoff of this site or be proactive and require more responsible development now? Recent experience on our Gulf Coast is a pretty good lesson that it's easier to prevent than it is to repair. The diversity of our neighborhood is what makes Maplewood a good place to live. This project will significantly alter the character of Maplewood. Development on this lot is not impossible. Responsible development requires more thought, however. I am -- I implore to you send this back to the drawing board with input from good citizens of the neighborhood to find a more responsible plan to mitigate the problems that we have outlined. Commissioner Leonard, I have met with you at functions before, I applaud your work in trying to make the development process more responsible to the citizens of Portland. Here is a prime opportunity. Development can happen on this site within the character of the neighborhood, but this plan does not provide for that. I urge you to support the appeal, Portland's reputation as one of the most livable cities in America is on the line. Thank you for your consideration.

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**Blair Fitsgibbon:** Blair fitsgibbon, i'm -- i've been a maplewood neighborhood liver for several decades now. I'm also an architect, registered in Oregon. I would just like to echo the comments you've already heard here today and lend my voice in support of the appeal. Thank you.

**Adams:** Thank you very much.

**Fitsgibbon:** I have one more question. I didn't have a chance to make copies of this. Is there a way to email you what I just said?

**Adams:** Karla can give you that information. You'll each have three minutes.

**Anne-Marie Fischer:** Anne-marie fischer. I've lived for 20 years in the neighborhood of the proposed subdivision. I oppose the subdivision plan before the hearings officer and asked that city council uphold our appeal of the hearings officer's decision. The hearings officer's findings should be reviewed in relation to the southwest community plan in a briefing dated september 20, 2001, to the city council for the comprehensive plan zoning map to the -- two of the most important guidelines listed were response to concerns about environmental issues, and acknowledges of correlation between development and an increase in degraded conditions. Several things about this proposed subdivision concern me. Implicit in the city staff's own comments, surface water runoff from the proposed subdivision will be a significant problem. The soil is type c, which is basically clay, clay soil absorbs water slowly and quickly shed the excess as surface runoff. A proposed subdivision slopes towards vermont creek and the storm water runoff solution proposed for this subdivision which was approved by the hearings officer, is not adequate. In a memorandum dated december 17, 2003, from b.e.s. to b.d.s., in the environmental characteristic section, it states that development on the site will result in a considerable increase in the amount of impervious surface leading to increased runoff and pollution. When rain falls on impervious surfaces, water flows directly into stormwater management system and nearby streams. Pollutants such as motor oil are picked up along the way. B.d.s. and b.e.s. both acknowledge this land division has the potential to create additional pollution in vermont creek. Aren't we supposed to reduce the pollution in the creeks? There are also many unanswered questions about the water quality swales. No modeling has been done, and without proper modeling, how can you tell whether the swale is going to fit on the bank, and what's the erosion impact on the very steep bank? A site map shows the water quality swale located in the front and side yards of the home at 6726 southwest 63rd. It's referred to as tract b. The more accurate sizing that is needed won't be made available until after the platting and then only during the development review. Isn't that like putting the cart before the horse? In closing, I would add that the half acre section of vermont creek at 63rd which is adjacent to our community, was purchased with public funds by one of the city's bureaus just a few years ago, and zoned as open space. It could have been a wonderful natural park with restoration potential, and educational opportunities for school children. Instead, it's -- we see it exploited as an overly polluted storm drain facility. Please uphold the maplewood appeal and avoid further damage to our shared legacy of trees, air quality, and water. Thank you.

**Adams:** Thank you very much.

**Elizabeth Callison:** Good afternoon, commissioners, my name is elizabeth, i'm here to support the appeal. I'm a director at large with west Multnomah soil and water conservation district, and my assistance was requested by the full membership of the maplewood neighborhood association by a vote at its last special meeting. I've provided some background to the group regarding the potential negative impacts after subdivision approached for what is now a parcel of forested land across vermont street from vermont creek. We have discussed at length the implications of the hearings officer's approval of increased storm water runoff from the new subdivision to go across the street into the bureau of environmental services detention facility, which is in stream. That is in vermont creek, a former trout stream, which has been there for the past several years. The item in the hearings officer's decision approving the subdivision, which i'm addressing here today, appears on pages 13 and 14 of his decision, and deals with the storm water management criteria as stated in

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chapter 33.653.020. The hearings officer notes that according to the criteria a and b of the chapter, if a storm water tract is proposed or required, an adequate amount of land and an appropriate location must be designated and the application itself must show that the storm water management system will provide adequate capacity for the expected amount of storm water. I ask city council to consider the underlying question of whether the storm water management plan is at all feasible, especially in light of Vermont Creek's degraded condition. We of course agree that the developer is not responsible for earlier degradation to the creek, however, the hearings officer displayed no knowledge that the creek is already under an enforcement order from the state water quality agency because of its polluted condition. The creek cannot handle anymore runoff, and city and staff run certain how much will even be generated by this new subdivision. The problem was not addressed by the hearings officer. The hearings officer did approve swales and planter boxes of what seemed to be questionable capacity.

**Cox:** I understand again, I believe this woman has never testified before, and now she's bringing in evidence that is not in the record in relationship to what is going on with Vermont Creek.

**Adams:** Kathryn?

**Beaumont:** She can testify today even if she didn't testify before the hearings officer. You should -- the issue is whether the substance of her testimony is -- pertains to an issue or evidence that's already in the record. Staff has indicated to me that this information is not in the record.

**Adams:** So therefore it's not allowable.

**Beaumont:** The council can choose to exclude it. The testimony should be based on issues and evidence that are already in the record.

**Callison:** I am dealing with the proposed new pipe, or the possible new pipe that will run from the subdivision into the creek. And I believe that was brought up in relation to the question of what capacity there is in the swales to accommodate the new runoff from the site.

**Beaumont:** That particular issue I understand was --

**Callison:** Can you explain to me what does not pertain? Or what is not accepted?

**Beaumont:** Your testimony here concerning the condition of Vermont Creek and whether or not it's under an enforcement order is not evidence that is in the record, so that's not evidence that you may address before the council.

**Callison:** Ok. Thank you. I won't mention that again, but I'm assuming the council already knows that.

**Adams:** We still have to follow the rules.

**Callison:** Yes.

**Adams:** If you -- you've got about a minute and 10 seconds.

**Callison:** I was going to discuss the situation with the creek, so I'll just backtrack a bit and mention that the placement of this swale on this corner, it's the steepest part of the site. The lot runs rather gently down and then finally it does a rather steep drop-off. So I'm concerned that this swale, the construction, the excavation and construction of the swale itself may turn into a hazard and a nuisance, and that during the construction phase particularly which will be in the winter months, that the runoff isn't going to be adequately taken care of, and that it might go into the new culvert, which is going to be quite a bit bigger than the old one, and into the creek. Thank you.

**Adams:** Thank you very much. Welcome.

**Chris Byrne:** My name is Chris Byrne. I live directly behind the proposed subdivision. I'm here to support the Maplewood appeal and to oppose the hearings officer's decision. Oregon grows beautiful, big, healthy trees. The large grove of trees were what attracted my family to live in Maplewood 19 years ago. This part of Maplewood was once a section of forest that was originally subdivided to the R20 designation. The lots are somewhat smaller now, but even today, each lot averages more than nine tall mature trees such as firs, cedars, maples also, and pines, and there are a abundance of native ground cover plants. All this is provided for a great habitat for numerous



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species of bird and small wildlife. Our neighborhood has been a magnet for other native species which have a hard time surviving in more you're banize -- urbanized areas of Portland. However, the hearings officer ruled that the subdivision could eliminate most of the trees on the lot. There are likely to be only zero to three trees remaining on each of the five home sites. Our neighborhood needs more of these trees to be preserved than the minimum proposed in the subdivision under the bureau of planning so-called option one. Trees are the best mitigators of storm water. At his storm water hears alan greenspan week at the Multnomah center, commissioner Adams told us in the near future, homeowners could receive a storm water credit on their sewer bill for just having significant trees on their property. At this meeting we were also informed by the bureau of staff that the canopy and root systems of these trees typically function to absorb approximately 30% of total rainfall. We think the trees on the proposed subdivision lots need protection and the hearings officer has failed to consider their significance and value in making his decision. I ask that the city council uphold the maplewood appeal. This is Portland, let's make this work.

**Adams:** Thank you very much. Do we have more people that signed up to testify?

**Moore:** We do.

**Greg Schifsky:** My name is greg schifsky. I am speaking on behalf of the maplewood neighborhood. My big thing is tree preservation. This issue is regionwide, not just a southwest Portland occurrence. This proposed subdivision on southwest 63rd and vermont has chosen a tree preservation option that's not favorable to this neighborhood. That's the option one. There are attachments enclosed, and the back of the sheet, that has pertinent information to the tree preservation. These studies are way more scientific than my time allows here today. When you consider this appeal, please consider the value of trees these perform a function, they provide values both aesthetically and for the health of our entire watershed. The option chosen for this site does not compensate for the loss of trees also being lost along olson road in Washington county, which is relevant to this, because of continuity, all the way from gabriel park through the fanno creek and the tualatin river basin as a whole. Preserving more significant trees on this site would improve the regionwide clean water goals, tree preservation option does not guarantee the preservation of more on-site significant trees, the future and health and removal of replacement trees down the road according to landscape plans because of a lack of inspeck shuns. And the survival of retained trees on the site are not guaranteed, and also adjacent along the property lines. Because of soil compaction and disturbance during construction phase, these trees will be under threat. If approved will will set back the watershed's ability to sustain itself and perhaps take a half century again to properly mitigate storm water, clean air, and provide upland wildlife corridor. So I do urge that you approve the maplewood neighborhood's appeal in this. One more thing about the preservation plan, i've got 30 years in the landscape trades, i'm a tree specialist, i'm not ann arborist, but there is a great deal of notation about the disease of trees on this particular site, the only person that I would say that's credible to do -- weigh in on this is actual plant pathologist and not ann arborist. Thank you.

**Dixon Shaver:** I live about a thousand feet from the proposed subdivision project. I'm here to support the maplewood neighborhood association's appeal and to speak about trees. The intended removal of some 86 trees dozens of which are mature, large conifers and maims, whose root clusters act as not only the best storm water mitigator but as noise and air pollutant barriers truly deserves both reconsideration and rethinking. The allegation that most of these trees are decrepit and diseased is but a hired consultant's opinion. Most of the trees on these lots appear to be very healthy to me. I doubt that any qualified arborist or plant pathologist would try to predict the viability or life span of a tree. It is possible to predict, however, what the outcome of the removal of so many mature, conifer and leafy tree canopies will have to the environment. Until now our area of maplewood has contributed no runoff to the creek as our roof drains are not connected to a storm sewer and there are no sidewalk uses along the street. This new subdivision will greatly

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increase impervious surface runoff. In fact, even the city bureau staff isn't sure how much runoff will be generated. Especially not during a large storm event. They allowed the developer to calculate for only a 25-year storm while ambiguously stating the soils on this property do not readily absorb much precipitation. How useful will planter boxes and swales actually then be? I submit that the conditions will be drastically worsened by more erosive storm water runoff from the proposed new houses and streets, not to mention the significant loss to our community that will result from the excessive tree cutting, the hearings officer is approved to take place. Thank you for your time. Again, I hope you'll support the maplewood association's appeal.

**Adams:** Thank you.

**Marilyn Coffel:** Council president Adams and members of the Portland city council, my name is marilyn coffel, I am a new property owner in the maplewood neighborhood of southeast -- southwest Portland. And as a native Oregonian, i've seen the growth in our state change many things. One of which is housing. I selected to buy a home in maplewood because it reflects the things that I value. Large lots, mature trees, hard wood floors, ranch style homes, and a safe area to walk. Shortly after I purchased my home, I found out about this new proposed development, and this project exidentifies everything I wasn't looking for in a neighborhood. Six houses crammed together on lots that aren't in character with the rest of the neighborhood. I haven't seen the design for the houses, but I would venture to guess they might possibly be pseudo craftsmen that have no possibility of blending into our ranch style neighborhood. Some might scoff at the potential for ranch style houses being ever considered historical, but I think that day will come as time passes. I've worked with both developers and residents on livability issues. If I wanted to live in a small house or a row house in their inner city, which I might as I age, I would have bought one. If I wanted a mc mansion in the buschs and on a lot so small I can hear my neighbors cough, would I have bought that. I didn't make either of those choices. But now comes mr. Whitaker, chomping away at our community built in the 1950's, in the name of livability, and we have another developer chomping on the other side of our neighborhood on olson and miles court. Each side of our neighborhood is being nibbled on by developers reminisce sent of the pac-man game of the 1980's. After so many bites, the character of the neighborhood vanishes forever. For most people, their home is their biggest investment. I say home, I don't mean speculative housing developments. It's fine to build a planned development where it's appropriate. Where green spaces are in-- or infill in the city exist. Having worked in corporate development, the real estate division at fred meyer and serving on the governor's livability council, I received a fairly good understanding of land use planning. And I know that four years ago this june the past mayor and city council granted full r.10 zoning to maplewood, and here we are just four years later watching that ruling possibly being overturned. And I think predictability in the use of land benefits both citizens and businesses because they know the rules. And this application eats away at the careful planning that has made Portland a great city with diverse neighborhoods. The beauty of our neighborhood can never be recreated, therefore, it must be preserved. Thank you.

**Adams:** Thank you. And you finished exactly on time. [laughter] you have done this before.

**Coffel:** I've done this a few times.

**Adams:** Nice to see you. Let's have our next panel up.

**Judy Shaver:** Judy shaver, i'm a resident of the maplewood neighborhood. I would like to ask that the city council uphold maplewood neighbor's appeal of the hearings officer's decision. In addition, i'd like to tell you a story about how I found out about the proposed subdivision at southwest 63rd and southwest vermont. One of my neighbors found the notice of public hearing in the blackberry bushes on southwest 63rd. She contacted b.d.s. About it and was informed by the planner that he had a picture of the signs being up, therefore, the developer had satisfied the requirement. How can this requirement be fulfilled if the sign is not readable? Falling a request for a copy of the notice, she had great difficulty obtaining it and was refused a copy when she initially asked staff at b.d.s.

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Falling several more abouts, a copy was finally emailed five days before the hearing. The email sent was -- was sent on July 15 and the hearing was to be on July 20. A couple of neighbors had the notice copied and went door-to-door hand delivering them. A majority of the people knew nothing about this proposed development. A new notice of public hearing was posted on southwest Vermont street at the intersection with southwest Shattuck road on Friday, July 15. The problem with signage in that location is that Vermont is a very busy, dangerous street, a person cannot walk along the street safely in order to read the sign, and it is not readable from a moving car. There is no place to pull over to the side of the street as there is no parking along Vermont street in this area. I feel the city should be doing a better job in keeping neighborhoods informed of proposed changes to their slice of Portland. Thank you for the opportunity to comment, and I ask that the city council uphold the Maplewood appeal.

**Adams:** Thank you very much.

**Patricia Norman:** I'm Patricia Norman, I live about two blocks from the proposed development. And I'm speaking in support of the Maplewood neighborhood association appeal. My particular part of the testimony will deal with the question of grading and executing and whether the hearings officer adequately addressed this item in his decision. The question is, does this subdivision plan sufficiently minimize impacts with resulting from grading and excavating to meet the requirements of Chapter 33? Minimizing impact is a primary goal which the hearings officer quoted from Title 33.635.100 on page 8 of his decision, which is excerpted. Existing contours and drainage patterns of the site must be left intact wherever practicable, where alteration to existing drainage is proposed, it must not adversely affect adjacent properties. C, clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the preliminary clearing and grading plan. D, top soil must be preserved on site to the extent practicable for use on the site after grading is complete. The hearings officer then states his findings while presuming the requirements of Chapter 33.635 had been met. He thus presumes among others the resume -- reshall erosion and said limit impacts have been limit and that water quality and aquatic habitat will therefore be protected in future. According to the clearing and grading legend blushed -- published by the city in the notice of this appeal. The total excavation for the site will be 1500 cubic yards tomorrow get a sense of the magnitude of this, one cubic yard will fill the bed of a regular size pickup truck. So this means that the hearings officer has just approved 1500 pickup loads of dirt to be dug up, which he then presumes will be stored on site. The elimination of so many large trees and long established ground vegetation which the officer approved also should be considered an impact. The process of clearing trees and grading the land in itself increases risks of soil shrillage towards the public street and ultimately soil erosion off site through the new culvert and into the creek. The hearings officer also seems to have disregarded likely impacts from the one or two proposed large swales intended to occupy the entire northeast frontage of southwest 63rd at Vermont. He approved the largest swales to be constructed on what is in fact the steepest portion of the entire property, and he was not clear about the relative size of the swale that's he thought he was reviewing. Nor had he seem aware of the likely risks attached to such large excavation soil during rainy winter season development although he vaguely acknowledged, quote, drainage patterns would be modified because there would be some changes in topography. Thank you very much.

**Adams:** Thank you.

**Earle Norman:** Earl Norman. I'm here to support the Maplewood neighborhood association appeal. To continue with the question of grading and excavating, even the b.e.s. staff who are advising on this project seemed unclear about the probable sizes and capacities of the various swales and planter boxes. However, it is very important to have a reasonable idea of what the swales capacities will be and how they will function during an average rainy winter. For example, b.e.s. doesn't even indicate how much surface runoff will probably have to leave the project site through the new culvert pipe. B.e.s. staff don't know how much the new pipe will have to be

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enlarged. They're guessing the existing culvert will have to be set lower and widened significantly. For example, colleen herald, b.e.s., leaves open the question in her memo, July 5, 2005, to Fabio, quote -- without seeing the calculations at this time, the existing 12-inch culvert crossing in southwest Vermont street may require upsidesing and upgrading to convey the additional flows. And later in the memo, she adds, quote -- this proposal will result in loss of vegetation coverage and an increase in impervious surface resulting in increased storm water runoff. She then sum rises her question that it is, quote -- not clear whether detention is included in private w.q. Sail in tract b and therefore is tract b big enough? The hearings officer stated in the new utilities and water detention swales needed to be confined mostly to the area surrounding the grading for the private street and public street construction he remarks on page nine of his decision that chapter 33.636 requires that top soil be, quote -- preserved in site for late err use in landscaping and/or revegetation. And that there will be quote -- a top soil storage area between proposed lots one and two for this purpose. I question whether the hearings officer really thought this through. Perhaps he was only thinking about the excavations for the new homes when he addressed chapter 33.635. Is it really likely that between those two lots there will be room for storage of 1500 cubic yards of dirt? Moreover, the hearings officer stated earlier in his decision that in his opinion there would be no detrimental changes to surface runoff patterns. His opinions seem to contradict common sense. The hearings officer had completely ignored subsurface water movement that is to say groundwater. Storage of water in the soil and the roots has bun one of the large saving graces of this neighborhood and is the primary reason this neighborhood has not historically contributed to erosion of the creek. The thing about how these parcels of land have function in the past is that the trees and soils have observed and helped precipitation and filtered it so it's slowly moved downward toward the local creek rather than rushing off paved surfaces. To conclude, the thing to focus on here is the water travelling subsurface toward the creek as well as the surface flows. Thank you for listening and I hope you will uphold the maplewood appeal.

**Adams:** Thank you very much. How many more people to testify?

**Moore:** Four more.

**Adams:** Kathryn? Is it allowable if we took a short five-minute recess? Is that ok with you? We're going to be taking a five-minute recess for personal privileges. [laughter] You're not allowed to talk to us and we're not allowed to talk to you during the break. Right?

**Beaumont:** Right.

**Adams:** Thank you. [recess]

**Adams:** We're now ready to resume hearing from supporters of the appeal.

**Adams:** Welcome. Be sure to give us your name.

**Micki Carier:** Micki carier, a member of the maplewood neighborhood association. Thank you for vantri green hearing us. I was inspired to join the maplewood neighborhood association meeting because of very large footprint home went up on my block. It was four stories tall amidst the usual one-story ranch, and a lot of trees were taken out. Soy was motivated to see what I can do to influence future development. I know it's going to happen, I voted for the urban growth boundary myself. I was armed with some fact and figures, but everyone else has spoken to those so much better than I can, that i'm going to speak for the heart for a moment. I'll probably finish before my three minutes is up. Basically I think that what I would like to see is this hearing, this appeal upheld so that we can go back to the drawing board and work with this guy about fewer houses, less impervious surface, whether that means more pervious surface, smaller homes that are probably planned and better tree preservation. We have about 20 people here today presenting a lot of facts and figures, which is excellent, but there's a lot more of us in the neighborhood that live there that just see it in simple terms like this. It's not that we're trying to stop growth, it's just that we would like to see it done a little more sensitively. So that's what I want to say. And also, I am in a tree liaison class, and i'm no expert on trees, but I will say that most these have something

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wrong with them. They have holes, fungus a. Lot of stuff, and they've been standing there for 50 years, 70 years, so that's not really a very sound criteria for lopping off 65% of the trees. So anyway, thanks for hearing me out.

**Adams:** Thank you.

**Gregg Bates:** Good afternoon, commissioners. I'm here also to support the maplewood appeal. I'm still on the money monsoon period, i've only lived in the neighborhood for a little over 30 days. My name is greg bates. As marilyn and others have indicated that are new to the neighborhood, we moved to that neighborhood for a specific reason. It was for the lot sizes, the trees, yes, the ranch style homes which are becoming quite in and chic I might add, they have surpassed the bungalows as the new fixer uppers.

**Adams:** They must be, you have all these architects.

**Bates:** That's right. It's quite an impressive homeowners association. And I will keep my time minimal because I am new to the community, but I want to emphasize the intangible that you can't put enough emphasis on the character of the neighborhoods and retaining that. I'm a real estate agent by profession, there are fabulous neighborhoods throughout Portland, but they need to retain their character and charm, and not try and intermix with so many different housing types. Thank you.

**Adams:** Thank you very much. Hi.

**Kathleen Moore:** Good afternoon, commissioners. Thank you. Kathleen moore, i'm a neighbor, relatively new to maplewood. I've been remodeling my little ranch burger. One of the reasons why I decided to move to the neighborhood for the past 17 years i've been a southeast high density, urbanite, and I got a little tired of hearing the neighbor's coffee grinder in the morning. It was time to have some personal space. That is what drew me to the neighborhood. That is what is going to keep me there as long as it retains its character. Portland has a commitment to see its identity, and its character preserved. We can allow for high density as well as preserving those areas where there's a little more space. Everyone is different, and they should be allowed to have them. I moved to maplewood because I saw the 2001 zoning map, 10,000 minimum, I thought, perfect. I don't have to leave the state. I can stay here. I grew up in Portland, I used to play in fanno creek, and vermont creek, and ride the ponies at alpenrose. It would be a real shame to see the trees go, that is definitely a character. It's the corridor down vermont. I think i'm one of the few people who want to talk about traffic. I'm a cyclist, I ride my bike across the river to work, over here on the southeast side, vermont is very dangerous. There's no shoulder, there's no sidewalk. I applaud that the developer wants to put in a section of sidewalk. But the impact of six more homes, that's at least 12 more trips --

**Adams:** I apologize, if I could interrupt you, Kathryn?

**Beaumont:** I am informed by staff that some of this [inaudible] at least as to traffic pertaining to vermont and cycling.

**Kathleen Moore:** Transportation impact? I thought there were items about transportation.

**Beaumont:** There is a transportation criterion in the land division code.

**Kathleen Moore:** Aren't pedestrians and cyclists -- we have to transport ourselves, either with our feet or wheels of some sort.

**Adams:** I suspect it's -- when your testimony goes beyond -- too far the impacts of -- it's probably not in the record.

**Kathleen Moore:** Ok. I'm new to the neighborhood, as I said, i'm new to the whole process, and I --

**Adams:** So am i.

**Kathleen Moore:** I've just been concerned with the impact that more traffic will have along vermont. The destruction of the urban forest, what that's going to do with the excess runoff and water, and the livability of the rural neighborhood setting that we have there. It's special, and I

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think neighborhoods should be able to retain their character. Thank you for listening. I hope you help me support the appeal.

**Adams:** Thank you so much. Appreciate it.

**Adams:** State your name for the record. You have three minutes.

**Corrine Weber:** Corrine Weber. 6245 southwest 39th avenue. Portland, 97221. Good afternoon, gentlemen. I'm here to support the appeal of the maplewood neighborhood association, and some of you go back several years, you know this has been going on, this particular site, since, I don't know, 2000, 2001. My particular concern today is for the wildlife habitat issues related to the massive tree cutting that was allowed under the hearings officer's decision. I doubt that the hearings officer has any expertise as a hydrologist or an arborist, he is a land use attorney and limited in those areas.

**Adams:** If I could have you speak up just a little bit. We don't want to miss your excellent testimony.

**Weber:** Thank you. Anyway, I believe that the hearings officer simply took the opinion of the private consultants that had been hired by the land developer, and accepted them without any further investigation. I've carefully looked over that grove of trees and am very familiar with them on the property that is proposed for the subdivision, and the trees are in very healthy condition. It's a beautiful site, and the trees are very valuable trees. The entire end of the block of Vermont Street looks like a nature preserve. It would be a great loss to the community if these 50 to 70-year-old trees were cut down. I understand that the bureau of environmental services requested the developer to preserve as many trees on the site as possible. But the hearings officer appears to have disregarded that advice and decided to allow the developer to do the minimum. The hearings officer approved what he termed a tree preservation plan for this subdivision, though it would be more accurate to call it a tree elimination plan, because it approves cutting down over 65% of the trees, and that doesn't even include the smaller trees. The hearings officer has completely disregarded our neighborhood's decades of history of helping to safeguard water quality and the Vermont Creek through controlling the storm water runoff at its source. For all its history, the area of Maplewood neighborhood has been a model as a source control of storm water. There are no sidewalks there, and I've been on that street many times in a downpour, and I know that the city fathers who originally designated that as an R10 zoning, R20, actually, they knew what they were doing. They knew the value of those trees and the need for those trees, and the function they would perform in that area was very significant. And so I would strongly support a reconsideration of this project, and I would certainly oppose the development as it stands. This is a lovely neighborhood of many well developed homes, and this would be a terrible, just destabilizing impact if this project were to go through. These houses will be there, they're well kept, well maintained, for another 50 years. The minimal effect that improvement and density that this little development will have, it's not worth it. It's not worth that.

**Adams:** Thank you very much. Appreciate it. We've heard from the proponents of the appeal, we're now going to hear from the principal opponent of the appeal. If you and your team would step forward. You will have 15 minutes, which is the additional time that I gave the staff and the appellant. Please state your name for the record.

**Chris Goodell:** Chris Goodell, land tech incorporated, representing the property owner, Mr. Robert Whitaker here today. Our address is 8835 Southwest Canyon Lane, number 402, Portland, Oregon. With me is Darryl Smith, and I'll allow himself to introduce him, Etna Fire, and Mr. William Cox, attorney at law, serving as legal counsel for Mr. Whitaker. First I'd like to take this opportunity to thank city staff, especially B.E.S., who have been extremely cordial and helpful throughout this entire process. I'd also like to thank the council for hearing our case here today. Mr. Defreistas did an adequate job of describing the product in -- project in detail, so I'd like to spend my time expressing our concerns. A tiny bit of background. In an effort to address and satisfy the extensive list of approval criteria, many of which people have brought up here today, the property

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owner has assembled a design team including the services for professional planning, surveying, civil engineering, geotechnical engineering, and licensed professional arborist. Our team is consulted extensively with city, b.d.s., and b.e.s. staff throughout the preparation of the application here before you today. I'd also like to note the applicant is in agreement with staff's recommendation and the hearings officer decision. I'd like to introduce mr. Cox at this time.

**Cox:** For the record, william cox, 0244 southwest california street, Portland, 97219. I think we really are dealing with two things here. One of them is emotion, the problem is that what prevents most of the neighbors from getting what they want is they should have made those pitches back before this property was zoned. The applicant has the right to rely on the laws in effect at the time the property was -- at the time of the application. At that time the application was considered to be full, or complete, all of the standards have been addressed and either met or can be met. The evidence before you is a comparison between neighborhood emotion and expert both public and private testimony. And evidence. The one issue that concerns me, and I apologize for standing up the times I did, I have no idea whether some of this was additional testimony or not. There was quite a lot of it. I didn't have the opportunity to be at the hearings officer's hearing, but I do request that you allow me to participate in the writing of the findings, provided the applicant prevails. And another concern that I have here is that there are only three of you here.

**Leonard:** Do you want to hold the time? You certainly may make any presentation you want. You've spent about four minutes discussing extraneous issues that don't speak to the concerns we've heard. So i'm waiting in the next 11 minutes to hear you speak to the issues that are raised. Frankly, it doesn't help me as you characterize the other side as being emotional. I need to hear you speak to the specific issues so that I can make a decision based on the facts.

**Cox:** I believe the specific issues were addressed by the hearings officer's decision. He addressed the code, he addressed the evidence, and he reached a conclusion based on that evidence. The issue that's were brought to your attention today were all -- all fall within those characteristics of that -- that are addressed by the hearings officer's decision. I can go through them point by point, but the facts are that the decision that you make here today is to be based on substantial evidence.

**Adams:** If you would go through the points, that would be useful for us.

**Chris Goodell:** I'll begin with a few. The first, it was an ascertainment made that neighborhood contact was not done. I'll neighborhood contact was done, including neighborhood meeting, public noticing, sign posting, all that was done that -- the evidence on record points to that.

**Leonard:** There's an issue over impervious versus pervious and a dispute between 13,000 square feet versus 23,000 square feet.

**Goodell:** Ok. Our firm has been working on the project since sometime last november. You start with a plan and you submit it, and it comes back, and people look -- staff look at it and say, it doesn't exactly -- it doesn't look like what we want, so we change the plan, address their concerns as far as impervious surfaces, we revised our system to comply with b.e.s. Standards. We have a recommendation of approval from the bureau of environmental services. It is --

**Adams:** So there isn't the concern -- one of the concerns expressed about storm water is there is a miscalculation. You don't believe that to be true?

**Goodell:** That's incorrect.

**Adams:** Ok. Do you want to go down the list of the other things? Or do you have your own list?

**Goodell:** I've made notes trout the hearing.

**Adams:** Proceed.

**Goodell:** The majority of the trees that are being removed are to construct the water quality facility, which has to be at the low end of the site. Water flows downhill, you can't treat it at the top

--

**Adams:** What about the trees to the back of the site back being away from the road? Why would those -- most of those --

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**Goodell:** If you look -- the majority of the trees along the eastern property line are to be preserved there. Are some on the northeast corner that will be removed. Some are impacted by grading for the water quality facility and the sidewalks. Others I don't have the report here in front of me, they could be diseased, i'm not sure at this particular point why those are slated to be approved. An arborist went out to the site, and despite the testimony you heard today, the code requires an arborist, not a plant pathologist to determine the trees' health, and that's what's -- the code tells us what to do. We -- based on direction from staff, that's what we did.

**Adams:** If I could direct, I count 10 trees on the property line, what I think is the east that are being removed, and they don't appear to conflict with any possible dwelling there. Are six that are on the property behind the existing house.

**Goodell:** I don't have the tree plan. It was up earlier.

**Leonard:** I am really -- i'm a little surprised, so far about seven minutes into your presentation, I absolutely expected to hear you rebut some of these specific issues raised. I'm not sure what you need to do from here, but i'm just -- depending upon the evidence, i'm just depending upon the evidence, and i'm trying to encourage you to get your thinking caps on and if you can, respond to these issues that are raised.

**Cox:** Commissioner Leonard, I think we are addressing them, and I beg your indulgence. But we are addressing the standards. The standards are those that were addressed in the hearings officer's decision.

**Leonard:** We have an appeal before us. And the appeal is raising some issue as to whether or not the hearings officer made a correct decision. I am obligated under the law to listen to the evidence.

So that one piece of evidence is the hearings officer's report, but the neighborhood has appealed that and said the hearings officer made an error. So what i'm looking for as they make those allegations, for you to rebut that. And you can't refer me back to the hearings officer's report because that's what's being appealed. I need you to rebut that. And i'm just saying, i'm trying to send you a little warning signal that I am alarmed that you don't appear to be able to do that.

**Cox:** Let me address the fact of the tree -- most of the evidence -- the complaints you're hearing from the neighbors having to do with water quality and trees are being imposed on this client by standards of the city. That is our response to that.

**Adams:** And I would say, sir, that I don't know why we would have -- and i'm asking you to explain -- I don't know why we would ask you to remove trees on a property line away from all the storm water facilities. It's a simple question I asked him.

**Goodell:** If you look at the grading plan, some of those trees, I guess they fall in line with where the proposed amounts of grading are. Trees 502, 499, 497, and 496 are proposed to be removed, are those the trees we're talking about?

**Saltzman:** Are those the trees in the northeast corner?

**Goodall:** Yes.

**Saltzman:** They're being proposed to be removed because of the grading plan? Is that what you're saying?

**Darrell Smith:** The grading topography for the half street improvement, or the sidewalk curb and street water quality swale, when you pull the slope back to accommodate the grading that's going to happen due to those facilities those trees would need to be removed.

**Adams:** I'm not talking about those, i'm talking about the trees on the north, east -- northeast lot line. They're one, two, three, four, five that appear on what is now lot one, and then there are more that again follow the property line on what appears to be the east property line. You've got one, two, three, four, maybe five, mine is -- designated to be saved, and I want to know why if those can be saved, why these other ones are being removed.

**Goodall:** Absent the arborist report, I don't know the specific reason for each one of those to be removed. My guess is if -- well --



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**Leonard:** Is the arborist report in evidence?

**Fabio de Freitas:** Yes, it is.

**Adams:** Fabio, do you have it? Maybe you can answer the question, then. There's the issue of trees. There's the issue of --

**Leonard:** Impervious -- I need a little more specificity on the impervious --

**Darrel Smith:** With the impervious surface, I believe one of the early on design that's was done and created a previous planner and a previous engineer that worked on this and submitted it had a meeting with Kelly Hyde of B.E.S. Who was at B.E.S. At that time, and I believe they had proposed a water quality design that did not meet code criteria. We had a meeting with Fabio, and B.E.S., Colleen, and came up with an alternative method, which is the design that sits before you today, coming up with the two different water quality treatment facilities one for the public improvements of the street, and the on-site private street as well. So the early on numbers that were talked about were somewhat incorrect, the design was flawed, we took care of that.

**Leonard:** I'm looking for, is staff going to be able to respond to the testimony of the 13,000 versus 23? Ok. Because I need to know why there's that discrepancy. In.

**Cox:** In response to your questions about the neighborhood points about the character, that is not relevant because we're complying with the zone. The zoning of this property took into consideration what the character of the neighborhood was. And so it's not a relevant issue here. The issue about the density, again, is the same response. We're complying with the codes. It's too bad some people have found it inappropriate for the infill of housing inside the city, but that's the only way the city has been able to meet its requirements under the metro standards.

The adjustment that's were applied for were characterized as a sham to get more lots. That's incorrect. That's to preserve the existing house. There's no more lots -- it has to do with an improved design and keeping the existing home as it appears today. If you were to impose those standards, the applicant would simply put more windows on a garage or on the north-facing elevation in the home. It's not a sham, it's in order to keep the house. It would be much easier to demolish the house and none of those standards would apply, it would be easier to comply, but the property owner wished to preserve the house and remodel it.

**Adams:** Could you go back again, when did you meet with the neighborhood to discuss this? Or how many times, or what was the sequencing, at what point in the project?

**Goodell:** It was made prior to submitting the development application.

**Adams:** Ok. What was the feedback you got in the neighborhood at that time?

**Goodell:** I wasn't the planner involved, but I have heard from -- it was much what you heard here today. A density issue.

**Adams:** There are -- are there any other issues you would like to address for our benefit?

**Darrel Smith, Land Tech:** My name is Darryl Smith, by a lot of what we heard about today was the aspect of treatment of water quality, and the ultimate design that is being proposed before us is not only water quality aspect, but also detention. So track B is designed to a 25-year storm event, so we will be detaining as well as providing water quality treatment to the site. We have the public street water quality facilities as well. Just provided for water quality, and a little bit of detention, and those systems. You don't find that the numbers we gave to call even at B.E.S. Was going to put in their modeling system to verify that there would not be a downstream impact to the existing culverts that were there. If we get into final engineers and we see that in Vermont there is a pipe that needs to be increased in size, we will be doing that as part of this subdivision.

**Leonard:** How many square feet of impervious surface do you have in the project you're -- in the project you're proposing?

**Smith:** I would have to go back to the record and look that up in the storm water calculation report that was done, and maybe staff can look that up as well.

**Adams:** Any other issues you'd like to raise with us? You have two minutes and 37 seconds.

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**Goodell:** I guess with regard to the tree preservation plan, there was talk that the trees that were being preserved would not end up being preserved, and there's -- the root protection zone was prepared by an arborist to ensure that wouldn't happen. Those root protection soon zones are drawn on the plans. The option that we have proposed, the applicants proposed, is allowed, that's the option number one. The neighbors may not think that's appropriate, but it's per myrna taylored by the development code and we met the criteria, and it was recommended for approval by b.e.s. staff. -- by b.d.s. staff. There was a considerable amount of testimony about the net excavation for creation of the swales, and the sides of the stockpile, and not all that excavated soil is top soil and will be saved. The top soil is the top six or so inches of soil, and the other soil is not top soil, and that is not going to be put in the stockpile.

**Leonard:** Have you developed plans for the five additional houses you're going to build? Do you know what they're going to look like?

**Goodell:** No, the property owner has not.

**Cox:** William cox again. I would like to address a concern I have, and that is that we need to have a majority of the commission vote in order to uphold this hearings officer's decision. If you find that you're unable to, i'm going to get a majority. I request that this matter be handed over to the remainder of the city council, let them listen to the hearing, listen to the tapes, and allow them to participate.

**Leonard:** I'll tell you, I would normally not entertain that. I would almost recommend that now so you have time to prepare to respond to some of these questions. I don't want to make a decision based on not all the information, and I am sorry, but i'm not -- i'm finding myself in a place where i'm just not getting the responses that I need to some of the appeal issues that have been raised. And I can sort out, as I think I can speak for all my colleagues, what is relevant and what's not, by the appelland. I don't need you to help me do that. But when something is raised, I do need to have a response.

**Cox:** If you have a specific question you need to have responded to, i'd appreciate you presenting that to us.

**Leonard:** Frankly normally when you're sitting in the audience you take notes and get ready before you come up here and tell us what it is they said that wasn't accurate.

**Adams:** We have asked you specific questions, including the storm de-- details of the storm water plan. We asked for reasons why removal of certain trees were intended. Those are two specific items that we asked you for details on and you have not been able to provide them to us for the record.

**Cox:** It's my understanding that the planning staff member is prepared to do that.

**Adams:** And commissioner Leonard is simply conveying that under normal circumstances we are ready to have the applicant, in this case the opponent, the applicant for the proposal, be prepared to do that. You have eight seconds left, anything you want to use those eight seconds on?

**Cox:** Nope.

**Adams:** Ok. Thank you very much. We will now hear from the opponents of the appeal, supporters of the applicant. Anyone sign up? We have no -- no one has signed up as an opponent of the appeal. Is there anyone in the room who would like to testify in opposition to the appeal that did not sign up? Ok. Now we will hear from the appellants. We will get an opportunity for a rebuttal, provide an opportunity for a rebuttal by the appellants. And once again, it's a formality, we have to have you say your name.

**Joan Calfee:** I just have a couple of brief comments. Joanne calfee. I think I would encourage the council to try to rule on this matter today. With have all had the same amount of time to prepare for this hearing, so I don't quite understand the difficulty that we just witnessed and their ability to rebut our points. I think it may underscore some of the confusion in applying the code to an actual development. One additional point that is specifically took comment that chris made, it is not

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correct that only the top six inches is considered top soil. With that i'll turn it over to my colleagues.

**Dan Cooper:** I just wanted to make a few comments to what william cox said. He said we had argued largely on emotion, not law, and I think if you look at the record that's not the case. We have argued a number of concrete points in the -- against the hearings officer's report. Secondly, regarding the impervious surfaces, I am arguing this is a 23,000 versus 13,000, they're saying they had revised the plan essentially from that that it was no longer relevant. I'm arguing that this storm water management proposal is fundamentally the same as a simplified approach referred to in the land tech document I quoted earlier. And that storm water pollution is expressly not allowed according to kelly hide at b.e.s. I believe what they have proposed is essentially what they have now, and it's not allowed.

**Gordon Trapp:** Thank you for listening to us. On this question of impervious surfaces and the water that comes from it, when we tell you the difference between the preexisting conditions and the calculation made for the post existing conditions, and we come up with nine times more impervious surfaces, this is a very significant amount. And this is -- no matter whether it's -- how it's treated, it finally gets down to vermont creek. And this is extra water that gets there, and as we read the storm water manual, section 1.6.1, not about the middle of the page, it talks about the additional water from these sites shouldn't be coming there if it's going to cause erosion of the banks or possible flooding. And we say that this can't happen. And we don't think it should be because it's showing us that there is too intense a density of development on that lot seven with those five houses in the road.

**Cooper:** I just want to drive home the two original points I made once again. Dan cooper. Hydrology report done at the request of b.d.s. and used to calculate water flow and the most appropriate storm water mitigation st. Louis has an -- a full 25% of the -- my calculations have been submitted as part of the record. Being off by 25% dramatically affects water flow calculation and cast as huge shadow of doubt on the feasibility of the solution. Either the hearings officer's report nor the testimony you heard from the applicant today addresses this error or the resultant storm water impact. Lastly, as I mentioned earlier, b.e.s.'s own documents state the simpler storm water management -- storm water management proposed by the applicant cannot be used at the amount of -- is going to exceed 13,000 square feet. We have shown the amount of impervious surfacees proposed is 23,000 square feet. The hearings officer's report does not address this and I disagree with the characterization of chris godell that is fundamentally changed since earlier in the year. So to me this is cut and dry legally. They have not met b.d.s.'s storm water management, the code storm water management criteria or b.e.s.'s storm water management criteria, thus this appeal should be upheld based on 33.653.020, storm water management criteria.

**Adams:** Thank you. You have 27 seconds left.

**Trapp:** Thank you, sir. The last question is regarding the adjustments on the house. You heard three architects testify at what is being done to that house. That house faces 63rd street regardless of what the applicant is trying to say. Thank you.

**Adams:** Thank you all very much. That concludes our rebuttal by the appellants. I think the council is interested in having fabio come up. It's now the time for council discussion. I think we collectively identified the issue of impervious area. We have questions about -- around the number of trees that are slated to be removed and the reason for those removal.

**de Freitas:** Thank you, commissioner Adams. I will generally respond to your storm water eh related questions initially. Colleen is here next to me from b.e.s. staff who has reviewed the proposal in depth and she'll probably provide some more detail responses to you.

**Leonard:** Specifically fabio the last point of the appellant in the concluding remarks that just occurred with respect to the b.e.s. storm water management criteria, the issue of the 23,000 versus

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13,000, is that an issue, and if so, why? And what do we know conclusively about that? And the issue of the hydrology report and 27%, can you clarify that?

**de Freitas:** I'll take a stab and then Colleen can fill in. This has been a very long process for this application. The application was submitted back in December of last year. As the applicant indicated today, there was an original proposal for storm water management on the site. They've quoted responses from B.E.S. Relative to that original proposal, which was accurate in that it was insufficient, it was inadequate to serve this site.

**Leonard:** The original plan.

**de Freitas:** The original plan, that's correct. Which the basis for that 13,000 square-foot number comes from. That was one of the primary issues that this application was deemed complete, and the applicant took significant amount of time working with staff, B.D.S. And B.E.S. Staff to develop a new storm water management proposal for the subdivision.

**Leonard:** Is there some magic to the number 13,000?

**de Freitas:** Yes. The relevance of that number was, that was the information that was provided with the original storm water calculations based on the original storm water proposal -- management proposal, which is not what we're talking about today.

**Adams:** And at 13 -- 13 is a number of division between how you have to respond, below 13 is a certain level of response and above is a different level of response, true or false?

**de Freitas:** I'm going to let Colleen answer that. I believe the relevance of the 13,000 square foot figure is whether or not you're capable of using B.E.S.'s form versus providing additional information.

**Leonard:** The issue here is that the appellant is saying there's 23,000 square feet of impervious surface, and 13,000 is the limit.

**Colleen Harold, Bureau of Environmental Services:** That is the basis for the argument today, Commissioner Leonard, that's true. Those calculations performed by the appellants, by I don't know whom, I'm sure we haven't had the opportunity to --

**Leonard:** I'm not asking you so much to respond to their calculations. Can you tell me, is the impervious surface in the proposal less than the 13,000?

**Harold:** I would like to speak to that. I cannot answer that question, or no -- I'm Colleen Harold, I work for B.E.S. development engineering. It may be true, but the fact is, they've split it all up. It doesn't go into one facility. So none of the facilities they have planned get water from impervious area greater than 13,000 square feet.

**Leonard:** So I guess all I'm trying to get at, you conclusively concluded that the specific proposal that you looked at complies with the storm water management --

**Harold:** Yes, I made them -- we asked them to redo it many times, and the final one, and I can speak -- I can tell you the private street is 8,460 square feet, that's the largest area, and --

**Leonard:** It has its own swale?

It does.

**Leonard:** Why is it the neighbors don't know that?

**Harold:** I'm not sure. They're pulling from old responses, and they had access to my entire file. And I might, looking back, have maybe pulled some things out that were old. I tried to guide them to the right information at the time.

**Leonard:** In any event, we know conclusively that's not the case.

**Harold:** That is true.

**Adams:** So can we have a discussion then about the trees? If you're satisfied with the discussion about the storm water.

**Leonard:** Yes.

**Adams:** All right. Trees.

**de Freitas:** Can I go back to storm water for a second?

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**Adams:** Only if it helps.

**de Freitas:** I think it may. The only --

**Adams:** In firms of an accurate understanding of what's going on.

**de Freitas:** The information that's been supplied to the city thus far is information that we received typically at this level of a game by any applicant. Their preliminary calculations to allow us to determine whether or not their proposed storm water management facility is going to be adequate. They have provided that information to us to date. If this project goes forward with your authorization, there is the plan check process that looms ahead of them, at which time they will be submitting more formal detailed calculations for the sizing of all of these facilities which is typical in the development of any subdivision.

**Leonard:** When you say size and facilities you mean specifically the swales?

**Harold:** Right. But the form is done on all the swales, I made them submit the -- simone mcalonen forms. -- sim forms. Simplified approach. That's a sim form.

**Adams:** Are we ready to move to the issue of trees?

**de Freitas:** Certainly. What would you like me to respond to?

**Adams:** Why they're cutting down so trees when it doesn't appear they have to.

**de Freitas:** Well --

**Adams:** Even though he might or might not be allowed to. Do they offer an explanation in their plan?

**de Freitas:** This will take a while to go through, because this is a very detailed tree preservation plan, and to answer your response, i'm going to take a few minutes to do so. There are a number of -- there are -- I can tell you exactly how many number of trees there are on the site. There are 103 trees on this site. Of which 59 of the trees are exempt for one reason or another. Either that they're unhealthy, they're hazardous, they're too close to a building that's going to remain, or which is the case along the --

**Saltzman:** You mean exempt from preservation?

**de Freitas:** That's correct.

**Adams:** Too close to a build that's already there, so there's a tree, a building, they've already been there for a while, and we'll make people cut them down?

**de Freitas:** No, sir.

**Leonard:** He's talking about a new house.

**Adams:** I assumed the new house would be an issue, but --

**de Freitas:** The city -- in our review --

**Adams:** You said the word "remained." did you mean once they're built this could be too close to a house?

**de Freitas:** No, sir. Let me explain myself. There are -- there are a half dozen or so six or eight exemption in chapter 630, tree preservation chapter, that eliminate certain trees from being considered for preservation for reasons of health reasons, hazardous reasons, trees that are located too close to an existing building, that's going remain on the site. Or trees that are off site, trees that are not entirely located on the subject site. And that's what I was referring to. There are a number of trees along the southwest 63rd and southwest vermont street frontages of the site that are actually off site, they're in the city's right of way. Because they're not on the subject site, they're exempt from preservation purposes. So the characterization of this intersection being heavily treed is very true. Unfortunately for preservation purposes, these trees can't be considered because they're not --

**Leonard:** Does that mean they're proposed to be cut the ones in the right of way?

There will be the need for a number of trees within the right of way --

**Leonard:** If they're in the right of way are they the city of Portland's trees?

**de Freitas:** Yes, sir.

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**Leonard:** So we could decide not to cut our own trees.

**de Freitas:** Well, there's --

**Leonard:** Couldn't we -- -- I don't mean that to be smart, I mean, can't we decide if we choose to, not to cut our own trees?

**Adams:** If they don't interfere with the swale.

**Leonard:** If they don't interfere with the project. If they're not on site, I guess i'm trying to figure out the relevance of a tree that's not on site to the project, and why it would need to be removed. Help me understand that.

**de Freitas:** I'll try to. Thank you. There are a number of right of way improvements imposed on this applicant by pdot. Street improvements which will include curb and sidewalk.

**Leonard:** I'm sorry to interrupt. While you're on that point, the unique point was made that i'd never heard before. That was we don't want sidewalks in our neighborhood. That's the first time i've heard that one. But the --

**Adams:** Did somebody get that on tape?

**Leonard:** Is it accurate that when this is done that literally the only stretch in there that will have a sidewalk or a curb is this development? And the other houses will not?

**de Freitas:** To what extent the nearest curb and sidewalk improvement along southwest vermont street exists, I don't know. It will be the only sidewalk and curb improvement in this general area.

**Leonard:** I'm not supposed to take testimony other than right here, i'm -- I see a sea of nodding heads so i'm assuming there are no sidewalks in the area. So if we didn't have -- i'm trying to help you guys, so don't be out of order, please. If we allowed the project, is there any flexibility in terms of the -- us allowing or not requiring to have sidewalks and curbs? Do we have any flexibility? I'm sending shudders through the bureaucracy asking that question, but i'm just more kind of intellectually -- i'm just asking, is that within our province?

**de Freitas:** The discussion is going in a thousand different directions. I'll do my best to --

**Leonard:** That's how we think.

**Saltzman:** Generally for new development we require curbs and sidewalks. Regardless of whether the surrounding development, existing development has them. I think the overall goal is -- as the city redevelops it says, that we eventually have sidewalks.

**Leonard:** I understand that. And I realize it's counter intuitive to everything we've talked about. I go to lents quite a bit, and that is a hue and cry that we have -- I get that. So you don't need to explain to me why we need sidewalks or curbs. I understand that. But what i'm asking is, in terms of looking for solutions here, do we have the authority in a case like this to waive that requirement?

**Kurt Kruger:** We do.

**Adams:** Can you identify yourself?

**Kurt Kruger, Office of Transportation:** Mr. Leonard, we do have that ability to do that.

**Leonard:** Under what conditions? Or do we set them here part of this? I'm not trying to say what we're going to do, i'm just asking what our range of options are.

**Kruger:** I believe the conditions are in the record, and I apologize for not being up to date on the record. But the record should allow --

**Leonard:** It seems to be pandemic to the discussion today.

**Kruger:** The improvements would be at the discretion of the city engineer, so we have the flexibility within the existing approved hearings officer decision to --

**Leonard:** What might that mean?

**Kruger:** If for some reason we found it uneconomic call and feasible to make those improvements, we could waive those requirements at this time.

**Leonard:** We being the city council?

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**Kruger:** We being the office of transportation, I certainly think the council could direct transportation to waive those requirements.

**Leonard:** Glad to hear you think we can.

**Adams:** We've established we have the right to waive the requirements for those improvements, and this started out with trees f we did that, how many trees might be saved, or are you unable to answer that on the fly?

**de Freitas:** There's no way for us to respond to that on the fly.

**Leonard:** Is it quite a few trees that are in the right of way?

**de Freitas:** There appear to be, yeah, a large number of trees in the right of way.

**Adams:** Six trees in the right of way, maybe more.

**de Freitas:** I should continue on with kurt's response. This is a balance of a number of different approval criteria that we have to evaluate when making a recommendation, when you all make a decision. One of which is transportation impacts.

**Adams:** I'm going to ask you to pause if you would. I want to finish the conversation on trees, because that's what we actually started talking about. We understand now that we have the right to waive and we have the -- we understand it's always a balance, and we understand the larger picture.

So -- but if you could finish up the discussion on some of the other trees that have been slated to be removed, specifically those trees that appear to be on the eastern property line.

**de Freitas:** I'll try.

**Adams:** At least what's the stated reason as given by the applicant.

**de Freitas:** I'm going to start from the northern -- northeastern corner of lot six. Identify to you what the arborist found. I should note before I get started. Just because the applicant has identified 15, 16 trees to be reserved to satisfy the code requirement, does not mean that he'll be removing every other tree on the site. Which meets our code. We typically, typically advise folks to show only those trees minimally on the site that satisfy one of the options in the code. -- situations exist 60, 80% of trees to be served on -- saved on a site, far in excess of what's minimally required. We always advise the applicant to demonstrate on the tree preservation plan the minimal numbers that satisfy our criteria. That does not mean that every other tree that's not identified on this plan is going to be removed from the site.

**Adams:** How much comfort does that give to -- that doesn't give me much comfort when i'm look at their ability to remove all these other trees.

**de Freitas:** Would you like me to go down the list for you?

**Adams:** Which list are you intending to go down?

**de Freitas:** The list identifying the slated reasons for removal and/or --

**Adams:** I keep thinking we're going to be almost there.

**de Freitas:** Ok.

**Adams:** Do you have a larger map than the one we have, which --

**de Freitas:** I do.

**Adams:** Can we look at it? Or do you have to read off it?

**de Freitas:** I'm reading off it.

**de Freitas:** So i'm talking about --

**Adams:** You don't have this memorized?

**de Freitas:** 106 trees, i'm afraid not. I'm talking about the trees lining the eastern property line, which is -- you've identified. Starting with the northernmost tree, identified as tree number 502. That specific tree is determined by the arborist to be a viable tree, but because of its proximity to the swale that's going to be constructed along the southwest vermont street frontage, it will be too close to save.

**Adams:** The conversation we were having about sidewalk improvements, that's something that -- that -- the viability of that tree would be impacted positively potentially?

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**de Freitas:** Potentially. And he does indicate in his table that it's a voluntary tree to be saved. He's not recommending it to be removed.

**Adams:** Next tree?

**de Freitas:** Number 499. Which he has classified as exempt due to its health, which is one of the exemptions allowed in the code. That tree is scheduled to be removed. The next tree to the south, 497, is also determined to be exempt because of hazardous and health issues and is scheduled to be removed. Tree number 496, the tree south of that is scheduled to be removed also and is classified as exempt because of its hazardous condition. Tree number 505, the next tree to the south, is also considered exempt because of its health reasons and is scheduled to be removed. Tree number 506, the root protection zone circled around it, is scheduled to be preserved. Tree 507 is exempt again because of its health conditions and is scheduled to be removed.

**Adams:** Just so i'm reminded, the developer, the applicant paid for this arborist's opinion?

**de Freitas:** As required by our submittal requirements of the code, yes, an arborist report was prepared by a consultant arborist paid for by the applicant. And this is no different from any other case this, is the information we rely on.

**Adams:** Are there any other trees council would like an explanation of, why they're eligible to be removed? That runs down most of the trees on the east side.

**Saltzman:** That covered the ones I was asking about.

**Adams:** So it is possible we might be able to save some trees if the city's requirements related to sidewalks and street improvements were modified from what's expected in the plan. Is that correct?

**de Freitas:** Yes, sir.

**Adams:** And could we make -- why don't I have commissioner Leonard talk about maybe some options instead of requiring the sidewalks and street improvements some other options.

**Harold:** May I -- may I be excused? I have a commitment. Thank you.

**Adams:** Yes. Thank you.

**Saltzman:** I guess the conundrum I find myself in, since I was the only one here when we adopted the southwest community plan, was we very clearly wanted this area to be r10, and thought when we made it r10 that r10 was r10. Subsequently we adopted the land division code, which allows the types of flexibility and subdivisions that are presented here, in other words, even the smaller lots, the 6,000 square foot lots are acceptable now under our land division code. Which I think commissioner Leonard might have been here for that, but -- and never theless, this application came well after both codes were in place. Correct?

**de Freitas:** That's correct.

**Saltzman:** There's no way to show preference for original intent as in the southwest community plan legally, I guess, or --

**Adams:** Not without a 37 claim.

[inaudible]

**Beaumont:** Under state law the applicant is entitled to have the application judge by the standards in effect at the time they filed their application, and the standards are as Fabio has presented them to you in the code.

**Adams:** Has the ownership changed since this application was filed? Originally?

**de Freitas:** Not to my knowledge.

**Leonard:** Just kind of a reverse measure 37 phenomena. Actually relaxed standards. It really doesn't apply here.

**Adams:** But the standards were relaxed before 37 was passed. Therefore, they're entitled to the more relaxed standards. That's what I thought.

**Saltzman:** I am going to suggest this is going to need a five-person or four-person council, because as much as i'm sympathetic to the points the neighbors are making, i'm not finding any grounds to



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reverse the hearings officer's decision, and i'm not willing to go along with the notion that we shouldn't be installing sidewalks, particularly along vermont, it's just fundamental to how the city needs to grow and be friendly to pedestrians. And so I think there's not going to be a three vote anything here today.

**Adams:** Let's find out. Commissioner Leonard?

**Leonard:** Well, in light of commissioner Saltzman's remarks, I would agree.

**Adams:** Ok. So our options -- .

**Beaumont:** The allowed time limit for making a decision, the last day is next wednesday october 5. So unless the applicant extends that time limit today, the longest you can continue it is to next wednesday, and you have to make a decision next wednesday, a final decision.

**Adams:** The applicant's legal representation expressed an interest to have the full council hear it. Can we hear from him whether they're interested in extending it?

**Beaumont:** Yes, you can.

**Adams:** Would you like to approach the mikes? Thank you. Tell us whether your client would be interested in extending it to allow for participation of the entire council.

**Cox:** William cox. Again, for the client. For the applicant. The only reason that I requested time for the -- all five to meet is because, and I preface that with the question, if you can't reach a unanimous decision today, I have no authority from this client to extend that time. If necessary I suppose i'll have to get it. I have no authority at this time to do so.

**Leonard:** My -- just to show my cards, my intention was to make a motion to uphold the hearings officer's decision with a couple of conditions, that we waive the requirement for the sidewalks in order to preserve the trees and the right of way, but that the neighborhood association develop a vermont creek improvement plan, that the developer would take the money that was not expended on the sidewalks and spend to implement the plan that the neighbors developed on the improvement of vermont creek.

**Adams:** It sounds like we're not going to reach agreement today.

**Leonard:** I'm getting not at good look from the city attorney.

**Adams:** Kathryn?

**Beaumont:** The second condition, really involves an offsite, a condition that relates to off-site, your conditions of approval have to relate to the site itself. So the second condition you proposed is problematic, the first condition, waiving the requirements, is not.

**Leonard:** Unless the neighbors and the developer came back with a plan that settled the case? If the developer voluntarily agreed to do that, that's not a problem. But if they won't, that is.

**Adams:** My advice is we continue this, is that the right word? And we have the representatives of the developer sit down with leadership of -- the prone rat folks, the representatives of the neighborhood, and try to work something out. Try to come to some agreement. You've heard from council concern about the trees and a concern about at the same time transportation issues, there are two people not here. I think that if you all sat down you might come up with an agreement that we could support.

**Beaumont:** All you can do is continue it to next wednesday.

**Adams:** You have until next wednesday.

**Beaumont:** My request to be to consult with your client, mr. Cox, and obtain authority to agree to an additional three to four weeks of time. If council makes a decision next week it's going to have to be tentative only and we're going to need to additional time to revise the findings.

**Cox:** Bill cox again. My question to you is, if we're going to leave this go until that sometime in the future, even if I convince my clients, is the record going to stay open? The neighbors have had a chance.

**Beaumont:** I think that's at the discretion of the council. Think my recommendation to you would be that you close -- you close the record for testimony today, and that if you're going to encourage

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the applicant to go talk with the neighbors, you give each side five minutes, 10 minutes, next week to report back to you on the results of their discussion and then be prepared to make a decision. But in the meantime, no additional written testimony, no other stuff to come into council.

**Leonard:** I'm with that. I can vote today. I don't think that the -- that you're going to be happy.

**Cox:** I find this highly irregular from your standards, and my client has a right to rely on the law. And we've had these meetings, and --

**Leonard:** This is part of the -- the law lays out this process. So you have to respect the process.

**Cox:** And we've done that. We've met with the neighbors.

**Leonard:** And i'm following the criteria, trying to find the solution that will work.

**Saltzman:** How many of us will be here next wednesday? Is there going to be four? I know the mayor won't be here.

**Moore:** Yes, just the mayor is out on the 5th.

**Adams:** Ok. So I propose we continue this until next wednesday. We close the record, we allow both sides to report back for no longer than 10 minutes each. The status of their discussions and we request that the applicant, representatives of the applicant consult with the applicant for an extension of three to five weeks. Three to four weeks to be safe. Otherwise, if the extension is not granted, we'll be voting next week.

**Beaumont:** You'll be voting and making a final decision next week.

**Adams:** I will tell you as a personal observation we would be much rather voting on something that both of you can come to some agreement with. Both sides are going to have to compromise. I'll tell you my own observations, it does not sound like your concerns, concerns stated about storm water are going to be backed up by the facts, the folks who make those decisions, presented testimony today that they're satisfied with that. It will have to be implemented, but in terms of where we're at with this proposal, I don't know that there's a lot of -- I don't know that there's a lot of independent sort of verification in the bureaus to back that up. So the issue for me is to try to come up with some more creative way to save more trees on the site. And it's that that I do think there's room for compromise there, and I do think that both sides can come to agreement if they want to. So --

**Beaumont:** Continued to next wednesday, october 5, at 2:00.

**Adams:** So council stands adjourned.

At 4:47 p.m., Council adjourned.